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By

S. B. No. 441

A BILL TO BE ENTITLED

AN ACT

1 *the administration and*
 2 relating to continuation of the Polygraph Examiners Board and *to*
 3 regulation of *polygraph examiners, trainees, and their employees;*
 4 ~~the operators of devices that are intended to~~
 5 ~~relating to confidentiality of results of polygraph examinations~~
 6 ~~determine if a person is telling the truth and to disclosure of the~~
 7 ~~information acquired from the devices; providing penalties.~~
 8 ~~relating to certain information;~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5, Polygraph Examiners Act, as amended
 (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by
 amending Subsections (a), (b), and (e) and by adding Subsections
 (f), (g), (h), and (i) to read as follows:

(a) *Creation of the board* There is hereby established in the Department of Public
 Safety [Engineering-Extension-Service;--Police--Training--Division;
 Texas---A-&-M--University--System;] a Polygraph Examiners Board
 consisting of six members who shall be citizens of the United
 States and residents of the state for at least two years prior to
 appointment. Four members[;--all-of--whom] shall each have been
 engaged for a period of five consecutive years as a polygraph
 examiner prior to appointment to the board, and at the time of
 appointment as an active polygraph examiner. Two members must be
representatives of the general public. A person is eligible for
appointment as a public member if the person ^{or} and the person's
spouse ^{is} are not licensed by an occupational regulatory agency in the
field of polygraph examining, ^{is} are not employed by and do ^{es} not
participate in the management of an agency or business entity

1 related to the field of polygraph examining, and do not have, other
2 than as ^a consumers, a financial interest in a business entity
3 related to the field of polygraph examining. No two board members
4 may be employed by the same person or agency. Two of the [At-least
5 two] members who are polygraph examiners must be qualified
6 examiners of a governmental law enforcement agency, one of which
7 shall be the supervisor of the polygraph section of the Department
8 of Public Safety, and [at--least] two of the members who are
9 polygraph examiners must be qualified polygraph examiners in the
10 commercial field. The members shall be appointed by the Governor
11 of the State of Texas with the advice and consent of the Senate for
12 a term of six years. [The-terms-of-office-of-members-appointed--to
13 the--initial--board--are-two-fer-two-years,-two-fer-four-years,-and
14 two-fer-six-years.] Any vacancy in an unexpired term shall be
15 filled by appointment of the Governor with the advice and consent
16 of the Senate for the unexpired term.

17 (b) The Department of Public Safety shall provide to the
18 board staff persons necessary to perform the administrative
19 functions of the board. The [number-of-employees-and-the--salaries
20 of--each,--including] travel [and-expense] allowance of the members
21 of the board [Board] shall be as fixed in the General Appropriation
22 Act [B111]. Each member of the board is entitled to a per diem as
23 set by legislative appropriation for each day that the member
24 engages in the business of the board.

25 (e) The Polygraph Examiners Board is subject to the Texas
26 Sunset Act, as amended (Article 5429k, Vernon's [✓] Texas Civil
27 Statutes); and unless continued in existence as provided by that

1 Act the board is abolished, and this Act expires effective
2 September 1, 1993 [~~1981~~].

3 (f) A member or employee of the board may not be an officer,
4 employee, or paid consultant of a trade association in the
5 polygraph examining field. A member or employee of the board may
6 not be related within the second degree by affinity or within the
7 second degree by consanguinity to a person who is an officer,
8 employee, or paid consultant of a trade association in the
9 regulated industry.

10 (g) A person who is required to register as a lobbyist under
11 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
12 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
13 not serve as a member of the board or act as the general counsel to
14 the board.

15 (h) It is a ground for removal from the board if a member:

16 (1) does not have at the time of appointment the
17 qualifications required by Subsection (a) of this section for
18 appointment to the board;

19 (2) does not maintain during the service on the board the
20 qualifications required by Subsection (a) of this section for
21 appointment to the board; or

22 (3) violates a prohibition established by Subsection (f) or
23 (g) of this section.

24 (i) If a ground for removal of a member from the board
25 exists, the board's actions taken during the existence of the
26 ground for removal are not invalid for that reason.

27 SECTION 2. Section 6, Polygraph Examiners Act, ^{as amended} (Article

4413(29cc), Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) The board may not adopt rules restricting competitive bidding or advertising by a licensee of the board except to prohibit false, misleading, or deceptive practices by the licensee. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

(1) restricts the licensee's use of any medium for advertising;

(2) restricts the licensee's personal appearance or use of his personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade name.

SECTION 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26, Polygraph Examiners Act, ^{as amended} (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 8. EXAMINER'S LICENSE QUALIFICATIONS. (a) A person is qualified to receive a license as an examiner

[~~{1}~~--who-is-at-least-21-years-of-age;-and

[~~{2}~~--who-is-a-citizen-of-the-United-States;-and

[~~{3}~~--who--establishes--that--he--is--a--person--of--honesty, truthfulness,--integrity,--and-moral-fitness,--and]

(1) [~~{4}~~] who has not been convicted of a felony or a misdemeanor involving moral turpitude; and

(2) [~~{5}~~] who holds a baccalaureate degree from a college or

1 university accredited by an organization that the board designates
2 and that the board determines has accreditation standards to ensure
3 a high level of scholarship for students [~~the-American-Association~~
4 ~~of-Collegiate-Registrars--and--Admissions--Officers~~], or in lieu
5 thereof, has five consecutive years of active investigative
6 experience immediately preceding his application; and

7 (3) [(6)] who is a graduate of a polygraph examiners course
8 approved by the board and has satisfactorily completed not less
9 than six months of internship training, provided that if the
10 applicant is not a graduate of an approved polygraph examiners
11 course, satisfactory completion of not less than 12 months of
12 internship training may satisfy this subdivision; and

13 (4) [(7)] who has passed an examination conducted by the
14 board, or under its supervision, to determine his competency to
15 obtain a license to practice as an examiner.

16 (b) [(8)] Prior to the issuance of a license, the applicant
17 must furnish to the board evidence of a surety bond or insurance
18 policy. Said surety bond or insurance policy shall be in the sum
19 of \$5,000.00 and shall be conditioned that the obligor therein will
20 pay to the extent of the face amount of such surety bond or
21 insurance policy all judgments which may be recovered against the
22 licensee by reason of any wrongful or illegal acts committed by him
23 in the course of his examinations.

24 (c) The board by rule shall establish the criteria by which
25 it determines whether an applicant complies with the active
26 investigative experience requirement established by Subsection
27 (a)(2) of this section.

Chapter 441, Acts of the 59th Legislature, Regular Session, 1965,

1 Sec. 9. ACQUISITION OF LICENSE BY PRESENT EXAMINERS. On the
2 effective date of this Act, any person who held a license issued by
3 the board [Beard] established or attempted to be established by
4 [Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888] and whose license was
5 in effect on the date on which said Act was held invalid, shall be
6 automatically licensed hereunder until such date as his license
7 under the Act aforesaid has expired and thereafter may renew his
8 license on payment of the fee herein provided. The applicant must
9 also satisfy the provisions of Section 8(b) [8(8)] of this Act.

10 Sec. 12. APPLICANT WITH OUT-OF-STATE LICENSE. The board may
11 waive any license requirement for an applicant with a valid license
12 from another state having license requirements substantially
13 equivalent to those of this state. [An--applicant--who--is-a
14 polygraph-examiner-licensed-under-the--laws--of--another--state--or
15 territory--of--the--United--States--may-be-issued-a-license-without
16 examination-by-the-board,-in-its-discretion,-upon-payment-of-a--fee
17 of-\$60-and-the-production-of-satisfactory-proof-that

18 [(1) --he-is-at-least-21-years-of-age,-and

19 [(2) --he-is-a-citizen-of-the-United-States,-and

20 [(3) --he-is-of-good-moral-character,-and

21 [(4) --the---requirements---for--the--licensing--of--polygraph
22 examiner-in-such-particular-state-or-territory-of-the-United-States
23 were-at-the-date-of-the-applicant's-licensing-therein-substantially
24 equivalent-to-the-requirements-now-in-force-in-this-state,-and

25 [(5) --the---applicant---had---lawfully---engaged---in---the
26 administration--of--polygraph--examinations--under-the-laws-of-such
27 state-or-territory-for-at-least-two-years-prior-to-his--application

1 for-license-hereunder;-and

2 [(6) --such---other---state---or---territory---grants--similar
3 reciprocity-to-license-holders-of-this-state;-and

4 [(7) --he-has-complied-with-Section-11-of-this-Act-]

5 Sec. 14. ([EXAMINATION-AND-LICENSE] FEES. (a) The board
6 shall establish reasonable and necessary fees for the
7 administration of this Act. [The-fee-to-be-paid--by--an--applicant
8 for--an-examination-to-determine-his-fitness-to-receive-a-polygraph
9 examiner's-license-is-\$20,-which-is-not-to-be-credited--as--payment
10 against-the-license-fee-

11 [(b) --The-fee-to-be-paid-for-an-original-polygraph-examiner's
12 license-is-\$60-

13 [(c) --The-fee-to-be-paid-for-an-internship-license-is-\$30-

14 [(d) --The--fee--to--be--paid--for-the-issuance-of-a-duplicate
15 polygraph-examiner's-license-is-\$10-

16 [(e) --The-fee-to-be-paid-for-a-polygraph--examiner's--renewal
17 license-is-\$25-

18 [(f) --The--fee--to--be--paid--for-the-extension-or-renewal-of-an
19 internship-license-is-\$25-

20 [(g) --The-fee-to-be-paid-for-a-duplicate--internship--license
21 is-\$10-]

22 (b) [(h)] The fees required by this Act may be paid by the
23 governmental agency employing the examiner.

24 Sec. 17. (TERMINATION AND RENEWAL OF EXAMINER'S LICENSE. (a)
25 Each polygraph examiner's license shall be issued for the term of
26 one year and shall, unless suspended or revoked, be renewed
27 annually.

1 (b) A person may renew an unexpired license by paying to the
2 board before the expiration date of the license the required
3 renewal fee.

4 (c) If a person's license has been expired for not longer
5 than 90 days, the person may renew the license by paying to the
6 board the required renewal fee and a fee that is one-half of the
7 examination fee for the license.

8 (d) If a person's license has been expired for longer than
9 90 days but less than two years, the person may renew the license
10 by paying to the board all unpaid renewal fees and a fee that is
11 equal to the examination fee for the license.

12 (e) If a person's license has been expired for two years or
13 longer, the person may not renew the license. The person may
14 obtain a new license by submitting to reexamination and complying
15 with the requirements and procedures for obtaining an original
16 license. [as-prescribed-by-the-board--A-polygraph-examiner-whose
17 license-has-expired-may-at-any-time--within--two--years--after--the
18 expiration--thereof-obtain-a-renewal-license-without-examination-by
19 making-a-renewal-application-therefor-and-satisfying-Section--8(2),
20 (3),-and-(4)---However,-any]

21 (f) A polygraph examiner whose license expired while he was
22 in the federal service on active duty with the armed forces of the
23 United States, or the national guard called into service or
24 training, or in training or education under the supervision of the
25 United States preliminary to induction into the military service,
26 may have his license renewed without examination if within two
27 years after termination of such service, training, or education

1 except under condition other than honorable, he pays to the board
2 the required renewal fee and furnishes the board with an affidavit
3 to the effect that he has been so engaged and that his service,
4 training, or education has been so terminated. [~~Section-8(2)-(3)~~
5 ~~and-(4)-of-this-Act-must-also-be-satisfied-~~]

6 Sec. 19. ~~REFUSAL~~, PROBATION, REPRIMAND, SUSPENSION,
7 REVOCATION--GROUNDS. The board shall [may] refuse to issue a
8 license, shall revoke or suspend a license, shall reprimand a
9 licensee, or may probate a license suspension [~~or-may-suspend-or~~
10 ~~revoke-a-license~~] on any one or more of the following grounds:

11 (1) for failing to inform a subject to be examined as to the
12 nature of the examination;

13 (2) for failing to inform a subject to be examined that his
14 participation in the examination is voluntary;

15 (3) material misstatement in the application for original
16 license or in the application for any renewal license under this
17 Act;

18 (4) wilful disregard or violation of this Act or of any
19 regulation or rule issued pursuant thereto, including, but not
20 limited to, wilfully making a false report concerning an
21 examination for polygraph examination purposes;

22 (5) if the holder of any license has been adjudged guilty of
23 the commission of a felony or a misdemeanor involving moral
24 turpitude;

25 (6) making any wilful misrepresentation or false promises or
26 causing to be printed any false or misleading advertisement for the
27 purpose of directly or indirectly obtaining business or trainees;

1 (7) having demonstrated unworthiness or incompetency to act
2 as a polygraph examiner as defined by this Act;

3 (8) allowing one's license under this Act to be used by any
4 unlicensed person in violation of the provisions of this Act;

5 (9) wilfully aiding or abetting another in the violation of
6 this Act or any regulation or rule issued pursuant thereto;

7 (10) where the license holder has been adjudged as a
8 habitual drunkard or mentally incompetent as provided in the
9 Probate Code;

10 (11) failing, within a reasonable time, to provide
11 information requested by the secretary as the result of a formal
12 complaint to the board which would indicate a violation of this
13 Act; [or]

14 (12) failing to inform the subject of the results of the
15 examination if so requested; or

16 (13) violating Subsection (a) of Section 19A of this Act
17 relating to the confidentiality of information acquired from an
18 examination.

19 Sec. 22. BOARD HEARING. (a) If the board proposes to
20 refuse a person's application for a license or to suspend or revoke
21 a person's license, the person is entitled to a hearing before the
22 board. [~~When there is cause to refuse an application or to suspend~~
23 ~~or--revoke--the license of any polygraph examiner, the board shall,~~
24 ~~not less than 30 days before--refusal,--suspension,--or--revocation~~
25 ~~action--is--taken,--notify--such person in writing, in person or by~~
26 ~~certified mail at the last address supplied to the--board--by--such~~
27 ~~person,--of--such impending refusal, suspension, or revocation, the~~

1 reasons therefor, and of his right to an administrative hearing for
2 the purpose of determining whether or not the evidence is
3 sufficient to warrant the refusal, suspension, or revocation action
4 proposed to be taken by the board. If, within 20 days after the
5 personal service of such notice or such notice has been deposited
6 in the United States mail, such person has not made a written
7 request to the board for this administrative hearing, the board is
8 authorized to suspend or revoke the polygraph examiner's license of
9 such person without a hearing. Upon receipt by the board of such
10 written request of such person within the 20-day period as set out
11 above, an opportunity for an administrative hearing shall be
12 afforded as early as is practicable. In no case shall the hearing
13 be held less than 10 days after written notification thereof,
14 including a copy of the charges, shall have been given the person
15 by personal service or by certified mail sent to the last address
16 supplied to the board by the applicant or licensee. The
17 administrative hearing in such cases shall be before the board.]

18 (b) Proceedings for the refusal, suspension, or revocation
19 of a license are governed by the Administrative Procedure and Texas
20 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
21 Statutes). [The board shall conduct the administrative hearings
22 and it is authorized to administer oaths and issue subpoenas for
23 the attendance of witnesses and the production of relevant books,
24 papers, documents, etc. On the basis of the evidence submitted at
25 the hearing, the board shall take whatever action it deems
26 necessary in refusing the application or suspending or revoking the
27 license.]

1 Sec. 23. ⁷JUDICIAL REVIEW. Any person dissatisfied with the
2 action of the board in refusing his application or suspending or
3 revoking his license, or any other action of the board, may appeal
4 the action of the board by filing a petition within the appropriate
5 time [~~30-days-thereafter~~] in the district court in the county where
6 the person resides or in the district court of Travis County,
7 Texas. An appeal of an action of the board is governed by the
8 Administrative Procedure and Texas Register Act, as amended
9 (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review
10 of an action of the board shall be conducted under the substantial
11 evidence rule. [~~In-all-appeals-prosecuted-in-any-of-the-courts-of~~
12 ~~this-state-pursuant-to-the-provisions--of--this--Act,--such--trials~~
13 ~~shall--be--de--nove--as-that-term-is-used-and-understood-in-appeals~~
14 ~~from-justice-of-the-peace-courts-to-county-courts.---When--such--an~~
15 ~~appeal--is--filed--and-the-court-thereby-acquires-jurisdiction,--all~~
16 ~~administrative-or-executive-action-taken--prior--thereto--shall--be~~
17 ~~null--and--void--and--of-no-force-and-effect,--and-the-rights-of-the~~
18 ~~parties-thereto-shall-be-determined-by-the-court-upon--a--trial--of~~
19 ~~the-matters-in-controversy-under-rules-governing-the-trial-of-other~~
20 ~~civil-suits-in-the-same-manner-and-to-the-same-extent-as-though-the~~
21 ~~matter--had--been-committed-to-the-courts-in-the-first-instance-and~~
22 ~~there-had-been-no-intervening-administrative-or-executive-action-or~~
23 ~~decision.---Under-no-circumstances-shall--the--substantial--evidence~~
24 ~~rule--as--interpreted--and--applied-by-the-courts-of-Texas-in-other~~
25 ~~cases-ever-be-used-or--applied--to--appeals--prosecuted--under--the~~
26 ~~provisions--of--this--Act.---The--Legislature--hereby--specifically~~
27 ~~declares-that-the-provisions-of-this-section-shall-not-be-severable~~

1 from-the-balance-of-this-Act,--and--further--specifically--declares
2 that--this--Act-would-not-have-been-passed-without-the-inclusion-of
3 this-section:--If-this-section,--or-any-part--thereof,--is--for--any
4 reason--ever--held--by-any-court-to-be-invalid,--unconstitutional-or
5 inoperative-in-any-way,--such-holding-shall--apply--to--this--entire
6 Act,--and--in-such-event-this-entire-Act-shall-be-null,--void-and-of
7 no-force-and-effect.]

8 Sec. 26. PENALTIES. (a) Any person who violates any
9 provision of this Act or any person who falsely states or
10 represents that he has been or is a polygraph examiner or trainee
11 or that he is qualified to apply instrumentation to the detection
12 of deception or verification of truth of statements shall be guilty
13 of a misdemeanor and upon conviction thereof shall be punished by a
14 fine of not less than \$100 nor more than \$1,000 or by imprisonment
15 in the county jail for a term of not to exceed six months, or both.

16 (b) A person commits an offense if the person intentionally,
17 knowingly, recklessly, or with criminal negligence violates Section
18 19A of this Act relating to the confidentiality of information
19 acquired from a polygraph examination. An offense under this
20 subsection is a Class B misdemeanor.

21 SECTION 4. The Polygraph Examiners Act, as amended (Article
22 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding
23 Sections 13A, 19A, 19B, and 24A to read as follows:

24 Sec. 13A. NOTICE AND ANALYSIS OF EXAMINATION RESULTS. (a)
25 Within 30 days after the day on which a license examination is
26 administered under this Act, the board shall notify each examinee
27 of the results of the examination. However, if an examination is

1 graded or reviewed by a national testing service, the board shall
2 notify the examinee of the results of the examination within two
3 weeks after the day that the board receives the results from the
4 testing service. If it is foreseeable that the notice of the
5 examination results will be delayed for longer than 90 days after
6 the examination date, the board shall notify the examinee of the
7 reason for the delay before the 90th day.

8 (b) If requested in writing by a person who fails a license
9 examination administered under this Act, the board shall furnish
10 the person with an analysis of the person's performance on the
11 examination.

12 Sec. 19A. CONFIDENTIALITY OF EXAMINATION RESULTS. (a)
13 Except as provided by Subsection (c) of this section, a licensed
14 polygraph examiner, licensed trainee, or employee of a licensed
15 polygraph examiner may not disclose to another person information
16 acquired from a polygraph examination.

17 (b) Except as provided by Subsection (d) of this section, a
18 person for whom a polygraph examination is conducted or an employee
19 of the person may not disclose to another person information
20 acquired from the examination.

21 (c) A licensed polygraph examiner, licensed trainee, or
22 employee of a licensed polygraph examiner may disclose information
23 acquired from a polygraph examination to:

24 (1) the examinee or any other person specifically designated
25 in writing by the examinee;

26 (2) the person, firm, corporation, partnership, business
27 entity, or governmental agency that requested the examination;

1 (3) members, or their agents, of governmental agencies such
2 as federal, state, county, or municipal agencies that license,
3 supervise, or control the activities of polygraph examiners;

4 (4) other polygraph examiners in private consultation, all
5 of whom will adhere to this section; or

6 (5) others as may be required by due process of law.

7 (d) A person for whom a polygraph examination is conducted
8 or an employee of the person may disclose information acquired from
9 the examination to a person described by Subsections (c)(1)-(5) of
10 this section.

11 (e) The board or any other governmental agency that acquires
12 information from a polygraph examination under Subsection (c)(3) of
13 this section shall keep the information confidential.

14 Sec. 19B. INFORMATION ABOUT COMPLAINTS. (a) The board
15 shall keep an information file about each complaint filed with the
16 board relating to a licensee.

17 (b) If a written complaint is filed with the board relating
18 to a licensee, the board, at least as frequently as quarterly,
19 shall notify the complainant of the status of the complaint until
20 its final disposition unless the notification would jeopardize an
21 undercover investigation.

22 Sec. 24A. CONSUMER INFORMATION. (a) The board shall
23 prepare information of consumer interest describing the regulatory
24 functions of the board, and describing the board's procedures by
25 which consumer complaints are filed with and resolved by the board.
26 The board shall make the information available to the general
27 public and appropriate state agencies.

1 (b) Each written contract for the services in this state of
2 a licensed polygraph examiner and each waiver of liability that is
3 signed by the subject of a polygraph examination shall contain the
4 name, mailing address, and telephone number of the board.

5 SECTION 5. A rule adopted by the Polygraph Examiners Board
6 before September 1, 1981, that conflicts with the Polygraph
7 Examiners Act, ^{as amended} (Article 4413(29cc), Vernon's Texas Civil Statutes),
8 as amended by this Act, is void. Within 90 days after September 1,
9 1981, the board shall repeal the rule.

10 SECTION 6. (a) A person holding office as a member of the
11 Polygraph Examiners Board on the effective date of this Act
12 continues to hold the office for the term for which the member was
13 originally appointed.

14 (b) The governor shall appoint two public members to fill
15 the offices of the incumbent members who are not polygraph
16 examiners in the commercial field and whose terms expire June 18,
17 1983, and June 18, 1985.

18 SECTION 7. This Act takes effect September 1, 1981.

19 SECTION 8. The importance of this legislation and the
20 crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT FORM

Austin, Texas

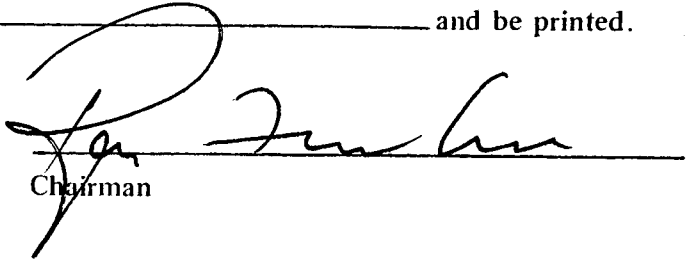
3/12/81

Date of report to Senate

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on State Affairs to which was referred
S. No. 441 have had the same under consideration, and I am instructed to report it back to the Senate
with the recommendation that it do pass and be printed.


Chairman

Paper clip the original and one copy of this form to the original bill and retain one copy for your file.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

March 2, 1981

Honorable Ray Farabee, Chairman
Committee on State Affairs
Senate Chamber
Austin, Texas

In Re: Senate Bill No. 441
By: Doggett

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Senate Bill No. 441 (relating to continuation of the Polygraph Examiners Board and regulation of the operators of devices that are intended to determine if a person is telling the truth and to disclosure of the information acquired from the devices) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The Polygraph Examiners Board is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Polygraph Examiners Board after September 1, 1981. The Polygraph Examiners Board will have the responsibility to carry out the provisions of this Act, except for certain administrative duties (accounting, payroll, etc.) which will be transferred to the Department of Public Safety from the Texas Engineering Extension Service.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 \$51,577; FY 1983 \$56,696), would be contingent, if approved, upon passage of SB 441 or similar legislation. These appropriations would provide for approximately 2 state employees and would be financed from the following increase in fees.

<u>Fees (Names)</u>	<u>Present Fees</u>	<u>New Fee Schedule</u>
Polygraph Examiner's License	\$60	\$150
License Renewal	25	100
Intern Application	25	75
Test Fees	-0-	50
Duplicate License	10	25

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation level for fiscal years 1982 and 1983, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

Source: Texas A&M System, Department of Public Safety; LBB Staff: TK, JH, KS, PA

amending the Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), by amending Sections 5, 6, 8, 9, 12, 14, 17, 19, 22, 23, and 26 and by adding Sections 13A, 19A, 19B, and 24A.

By: Doggett

S.B. No. 441

A BILL TO BE ENTITLED

AN ACT

1 *the administration and*
2 relating to continuation of the Polygraph Examiners Board and ~~to~~
3 *polygraph examiners, trainees, and their employees;*
4 regulation of ~~the operators of devices that are intended to~~
5 *relating to confidentiality of results of polygraph examinations;*
6 ~~determine if a person is telling the truth and to disclosure of the~~
7 *relating to certain information;*
8 ~~information acquired from the devices~~ providing penalties; *amending*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (e) and by adding Subsections (f), (g), (h), and (i) to read as follows:

(a) There is hereby established in the Department of Public Safety [Engineering-Extension-Service;--Police--Training--Division; Texas---A-&-M--University--System;] a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment. Four members[;--all-of--whom] shall each have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. Two members must be representatives of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the
field of polygraph examining, are not employed by and do not participate in the management of an agency or business entity

Replaced by House Substitute

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1 related to the field of polygraph examining, and do not have, other
2 than as consumers, a financial interest in a business entity
3 related to the field of polygraph examining. No two board members
4 may be employed by the same person or agency. Two of the [At-least
5 two] members who are polygraph examiners must be qualified
6 examiners of a governmental law enforcement agency, one of which
7 shall be the supervisor of the polygraph section of the Department
8 of Public Safety, and [at-least] two of the members who are
9 polygraph examiners must be qualified polygraph examiners in the
10 commercial field. The members shall be appointed by the Governor
11 of the State of Texas with the advice and consent of the Senate for
12 a term of six years. [The-terms-of-office-of-members-appointed--to
13 the--initial--board--are-two-fer-two-years,-two-fer-four-years,-and
14 two-fer-six-years-] Any vacancy in an unexpired term shall be
15 filled by appointment of the Governor with the advice and consent
16 of the Senate for the unexpired term.

17 (b) The Department of Public Safety shall provide to the
18 board staff persons necessary to perform the administrative
19 functions of the board. The [number-of-employees-and-the--salaries
20 of--each,--including] travel [and-expense] allowance of the members
21 of the board [Board] shall be as fixed in the General Appropriation
22 Act [Bill]. Each member of the board is entitled to a per diem as
23 set by legislative appropriation for each day that the member
24 engages in the business of the board. "

25 (e) The Polygraph Examiners Board is subject to the Texas^{2/3}
26 Sunset Act, as amended (Article 5429k, Vernon's Texas Civil
27 Statutes); and unless continued in existence as provided by that

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1 Act the board is abolished, and this Act expires effective
2 September 1, 1993 [~~1981~~].

3 "(f) A member or employee of the board may not be an officer,
4 employee, or paid consultant of a trade association in the
5 polygraph examining field. A member or employee of the board may
6 not be related within the second degree by affinity or within the
7 second degree by consanguinity to a person who is an officer,
8 employee, or paid consultant of a trade association in the
9 regulated industry.

10 "(g) A person who is required to register as a lobbyist under
11 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
12 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
13 not serve as a member of the board or act as the general counsel to
14 the board.

15 "(h) It is a ground for removal from the board if a member:

16 "(1) does not have at the time of appointment the
17 qualifications required by Subsection (a) of this section for
18 appointment to the board;

19 "(2) does not maintain during the service on the board the
20 qualifications required by Subsection (a) of this section for
21 appointment to the board; or

22 "(3) violates a prohibition established by Subsection (f) or
23 (g) of this section.

24 "(i) If a ground for removal of a member from the board
25 exists, the board's actions taken during the existence of the
26 ground for removal are not invalid for that reason."

27 SECTION 2. Section 6, Polygraph Examiners Act, ^{as amended} (Article

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4413(29cc), Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

"(d) The board may not adopt rules restricting competitive bidding or advertising by a licensee of the board except to prohibit false, misleading, or deceptive practices by the licensee. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

"(1) restricts the licensee's use of any medium for advertising;

"(2) restricts the licensee's personal appearance or use of his personal voice in an advertisement;

"(3) relates to the size or duration of an advertisement by the licensee; or

"(4) restricts the licensee's advertisement under a trade name."

SECTION 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26, Polygraph Examiners Act, ^{as amended} (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 8. EXAMINER'S LICENSE QUALIFICATIONS. (a) A person is qualified to receive a license as an examiner

"(1) ~~who is at least 21 years of age, and~~

"[(2) -- who is a citizen of the United States, and

"[(3) -- who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness, and]

"(1) ~~who~~ [(4)] who has not been convicted of a felony or a misdemeanor involving moral turpitude; and ^{4/5}

"(2) [(5)] who holds a baccalaureate degree from a college or

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1 university accredited by an organization that the board designates
2 and that the board determines has accreditation standards to ensure
3 a high level of scholarship for students [the-American-Association
4 of-Collegiate-Registrars--and--Admissions--Officers], or in lieu
5 thereof, has five consecutive years of active investigative
6 experience immediately preceding his application; and

7 “(3) [(6)] who is a graduate of a polygraph examiners course
8 approved by the board and has satisfactorily completed not less
9 than six months of internship training, provided that if the
10 applicant is not a graduate of an approved polygraph examiners
11 course, satisfactory completion of not less than 12 months of
12 internship training may satisfy this subdivision; and

13 “(4) [(7)] who has passed an examination conducted by the
14 board, or under its supervision, to determine his competency to
15 obtain a license to practice as an examiner.

16 “(b) [(8)] Prior to the issuance of a license, the applicant
17 must furnish to the board evidence of a surety bond or insurance
18 policy. Said surety bond or insurance policy shall be in the sum
19 of \$5,000.00 and shall be conditioned that the obligor therein will
20 pay to the extent of the face amount of such surety bond or
21 insurance policy all judgments which may be recovered against the
22 licensee by reason of any wrongful or illegal acts committed by him
23 in the course of his examinations.

24 “(c) The board by rule shall establish the criteria by which
25 it determines whether an applicant complies with the active^{5/6}
26 investigative experience requirement established by Subdivision (2) of
(a) (2) of this section. by A subsection

Chapter 441, Acts of the 59th Legislature,
Regular Session, 1965

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1 "Section 9. ACQUISITION OF LICENSE BY PRESENT EXAMINERS. On the
2 effective date of this Act, any person who held a license issued by
3 the board [Board] established or attempted to be established by
4 Acts, 1965, 59th Leg., R.S., Ch. 441, p. 888, and whose license was
5 in effect on the date on which said Act was held invalid, shall be
6 automatically licensed hereunder until such date as his license
7 under the Act aforesaid has expired and thereafter may renew his
8 license on payment of the fee herein provided. The applicant must
9 also satisfy the provisions of Subsection (b) of Section 8(b) [8(8)] of this Act. "

10 "Section 12. APPLICANT WITH OUT-OF-STATE LICENSE. The board may
11 waive any license requirement for an applicant with a valid license
12 from another state having license requirements substantially
13 equivalent to those of this state. [An--applicant--who--is--a
14 polygraph-examiner-licensed-under-the--laws--of--another--state--or
15 territory--of--the--United--States--may-be-issued-a-license-without
16 examination-by-the-board, in its discretion, upon payment of a fee
17 of \$60 and the production of satisfactory proof that
18 " [(1) --he-is-at-least-21-years-of-age,--and
19 " [(2) --he-is-a-citizen-of-the-United-States,--and
20 " [(3) --he-is-of-good-moral-character,--and
21 " [(4) --the---requirements---for--the--licensing--of--polygraph
22 examiner-in-such-particular-state-or-territory-of-the-United-States
23 were-at-the-date-of-the-applicant's-licensing-therein-substantially 6/7
24 equivalent-to-the-requirements-now-in-force-in-this-state,--and
25 " [(5) --the---applicant---had---lawfully---engaged---in---the
26 administration--of--polygraph--examinations--under-the-laws-of-such
27 state-or-territory-for-at-least-two-years-prior-to-his--application

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1 for-license-hereunder;-and

2 "[(6) --such---other---state---or---territory---grants--similar
3 reciprocity-to-license-holders-of-this-state;-and

4 "[(7) --he-has-complied-with-Section-11-of-this-Act-] "

5 "Section^{ion} 14. [EXAMINATION-AND-LICENSE] FEES. (a) The board
6 shall establish reasonable and necessary fees for the
7 administration of this Act. [The-fee-to-be-paid--by--an--applicant
8 for--an-examination-to-determine-his-fitness-to-receive-a-polygraph
9 examiner's-license-is-\$20;-which-is-not-to-be-credited--as--payment
10 against-the-license-fee-] 3/2

11 " (b) [The-fee-to-be-paid-for-an-original-polygraph-examiner's
12 license-is-\$60-

13 "[(c) --The-fee-to-be-paid-for-an-internship-license-is-\$30-

14 "[(d) --The--fee--to--be--paid--for-the-issuance-of-a-duplicate
15 polygraph-examiner's-license-is-\$10-

16 "[(e) --The-fee-to-be-paid-for-a-polygraph--examiner's--renewal
17 license-is-\$25-

18 "[(f) --The--fee--to--be--paid--for-the-extension-or-renewal-of-an
19 internship-license-is-\$25-

20 "[(g) --The-fee-to-be-paid-for-a-duplicate--internship--license
21 is-\$10- ✓

22 " (b) [(h)] The fees required by this Act may be paid by the
23 governmental agency employing the examiner. 1/8

24 "Section^{ion} 17. TERMINATION AND RENEWAL OF EXAMINER'S LICENSE. (a)
25 Each polygraph examiner's license shall be issued for the term of
26 one year and shall, unless suspended or revoked, be renewed
27 annually.

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1 “(b) A person may renew an unexpired license by paying to the
2 board before the expiration date of the license the required
3 renewal fee.

4 “(c) If a person's license has been expired for not longer
5 than 90 days, the person may renew the license by paying to the
6 board the required renewal fee and a fee that is one-half of the
7 examination fee for the license.

8 “(d) If a person's license has been expired for longer than
9 90 days but less than two years, the person may renew the license
10 by paying to the board all unpaid renewal fees and a fee that is
11 equal to the examination fee for the license.

12 “(e) If a person's license has been expired for two years or
13 longer, the person may not renew the license. The person may
14 obtain a new license by submitting to reexamination and complying
15 with the requirements and procedures for obtaining an original
16 license.

[as-prescribed-by-the-board--A-polygraph-examiner-whose
17 license-has-expired-may-at-any-time--within--two--years--after--the
18 expiration--thereof-obtain-a-renewal-license-without-examination-by
19 making-a-renewal-application-therefor-and-satisfying-Section--8(2)-
20 (3)-and-(4)--However,-any]

21 “(f) A polygraph examiner whose license expired while he was
22 in the federal service on active duty with the armed forces of the
23 United States, or the national guard called ^{8/9} into service or
24 training, or in training or education under the supervision of the
25 United States preliminary to induction into the military service,
26 may have his license renewed without examination if within two
27 years after termination of such service, training, or education

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1 except under condition other than honorable, he pays to the board
2 the required renewal fee and furnishes the board with an affidavit
3 to the effect that he has been so engaged and that his service,
4 training, or education has been so terminated. [~~Section-8(2)-(3)~~
5 ~~and-(4)-of-this-Act-must-also-be-satisfied-~~] "

6 "Section 19. REFUSAL, PROBATION, REPRIMAND, SUSPENSION,
7 REVOCATION--GROUNDS. The board shall [may] refuse to issue a
8 license, shall revoke or suspend a license, shall reprimand a
9 licensee, or may probate a license suspension [~~or-may-suspend-or~~
10 ~~revoke-a-license~~] on any one or more of the following grounds:

11 " (1) for failing to inform a subject to be examined as to the
12 nature of the examination;

13 " (2) for failing to inform a subject to be examined that his
14 participation in the examination is voluntary;

15 " (3) material misstatement in the application for original
16 license or in the application for any renewal license under this
17 Act;

18 " (4) wilful disregard or violation of this Act or of any
19 regulation or rule issued pursuant thereto, including, but not
20 limited to, wilfully making a false report concerning an
21 examination for polygraph examination purposes;

22 " (5) if the holder of any license has been adjudged guilty of
23 the commission of a felony or a misdemeanor involving moral ^{9/}
24 turpitude; ₁₆

25 " (6) making any wilful misrepresentation or false promises or
26 causing to be printed any false or misleading advertisement for the
27 purpose of directly or indirectly obtaining business or trainees;

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1 (7) having demonstrated unworthiness or incompetency to act
2 as a polygraph examiner as defined by this Act;

3 (8) allowing one's license under this Act to be used by any
4 unlicensed person in violation of the provisions of this Act;

5 (9) wilfully aiding or abetting another in the violation of
6 this Act or any regulation or rule issued pursuant thereto;

7 (10) where the license holder has been adjudged as a
8 habitual drunkard or mentally incompetent as provided in the
9 Probate Code;

10 (11) failing, within a reasonable time, to provide
11 information requested by the secretary as the result of a formal
12 complaint to the board which would indicate a violation of this
13 Act; [er]

14 (12) failing to inform the subject of the results of the
15 examination if so requested; or

16 (13) violating Subsection (a) of Section 19A of this Act
17 relating to the confidentiality of information acquired from an
18 examination. //

19 "Sec^{fin} 22. BOARD HEARING. (a) If the board proposes to
20 refuse a person's application for a license or to suspend or revoke
21 a person's license, the person is entitled to a hearing before the
22 board. [When there is cause to refuse an application or to suspend

23 or--revoke--the license of any polygraph examiner, the board shall,
24 not less than 30 days before refusal, suspension, or revocation
25 action is taken, notify such person in writing, in person or by
26 certified mail at the last address supplied to the board by such
27 person, of such impending refusal, suspension, or revocation, the

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1 reasons therefor, and of his right to an administrative hearing for
2 the purpose of determining whether or not the evidence is
3 sufficient to warrant the refusal, suspension, or revocation action
4 proposed to be taken by the board. If, within 20 days after the
5 personal service of such notice or such notice has been deposited
6 in the United States mail, such person has not made a written
7 request to the board for this administrative hearing, the board is
8 authorized to suspend or revoke the polygraph examiner's license of
9 such person without a hearing. Upon receipt by the board of such
10 written request of such person within the 20-day period as set out
11 above, an opportunity for an administrative hearing shall be
12 afforded as early as is practicable. In no case shall the hearing
13 be held less than 10 days after written notification thereof,
14 including a copy of the charges, shall have been given the person
15 by personal service or by certified mail sent to the last address
16 supplied to the board by the applicant or licensee. The
17 administrative hearing in such cases shall be before the board.]

18 " (b) Proceedings for the refusal, suspension, or revocation
19 of a license are governed by the Administrative Procedure and Texas
20 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
21 Statutes). [The board shall conduct the administrative hearings
22 and it is authorized to administer oaths and issue subpoenas for ¹¹/₁₂
23 the attendance of witnesses and the production of relevant books,
24 papers, documents, etc. On the basis of the evidence submitted at
25 the hearing, the board shall take whatever action it deems
26 necessary in refusing the application or suspending or revoking the
27 license.]

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1 ^{How} Sec. 23. JUDICIAL REVIEW. Any person dissatisfied with the
2 action of the board in refusing his application or suspending or
3 revoking his license, or any other action of the board, may appeal
4 the action of the board by filing a petition within the appropriate
5 time [30-days-thereafter] in the district court in the county where
6 the person resides or in the district court of Travis County,
7 Texas. An appeal of an action of the board is governed by the
8 Administrative Procedure and Texas Register Act, as amended
9 (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review
10 of an action of the board shall be conducted under the substantial
11 evidence rule. [In-all-appeals-prosecuted-in-any-of-the-courts-of
12 this-state-pursuant-to-the-provisions--of--this--Act;--such--trials
13 shall--be--de--nove--as-that-term-is-used-and-understood-in-appeals
14 from-justice-of-the-peace-courts-to-county-courts.---When--such--an
15 appeal--is--filed--and-the-court-thereby-acquires-jurisdiction;--all
16 administrative-or-executive-action-taken--prior--thereto--shall--be
17 null--and--void--and--of-no-force-and-effect;--and-the-rights-of-the
18 parties-thereto-shall-be-determined-by-the-court-upon--a--trial--of
19 the-matters-in-controversy-under-rules-governing-the-trial-of-other
20 civil-suits-in-the-same-manner-and-to-the-same-extent-as-though-the
21 matter--had--been-committed-to-the-courts-in-the-first-instance-and
22 there-had-been-no-intervening-administrative-or-executive-action-or
23 decision.---Under-no-circumstances-shall--the--substantial--evidence
24 rule--as--interpreted--and--applied-by-the-courts-of-Texas-in-other
25 cases-ever-be-used-or--applied--to--appeals--prosecuted--under--the
26 provisions--of--this--Act.---The--Legislature--hereby--specifically
27 declares-that-the-provisions-of-this-section-shall-not-be-severable

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1 from-the-balance-of-this-Act,--and--further--specifically--declares
2 that--this--Act-would-not-have-been-passed-without-the-inclusion-of
3 this-section:--if-this-section,--or-any-part--thereof,--is--for--any
4 reason--ever--held--by-any-court-to-be-invalid,--unconstitutional-or
5 inoperative-in-any-way,--such-holding-shall--apply--to--this--entire
6 Act,--and--in-such-event-this-entire-Act-shall-be-null,--void-and-of
7 no-force-and-effect.] //

8 "Sec^{ion} 26. PENALTIES. (a) Any person who violates any
9 provision of this Act or any person who falsely states or
10 represents that he has been or is a polygraph examiner or trainee
11 or that he is qualified to apply instrumentation to the detection
12 of deception or verification of truth of statements shall be guilty
13 of a misdemeanor and upon conviction thereof shall be punished by a
14 fine of not less than \$100 nor more than \$1,000 or by imprisonment
15 in the county jail for a term of not to exceed six months, or both.

16 "(b) A person commits an offense if the person intentionally,
17 knowingly, recklessly, or with criminal negligence violates Section
18 19A of this Act relating to the confidentiality of information
19 acquired from a polygraph examination. An offense under this
20 subsection is a Class B misdemeanor. "

21 SECTION 4. The Polygraph Examiners Act, as amended (Article
22 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding^{13/}₁₄
23 Sections 13A, 19A, 19B, and 24A to read as follows:

24 "Sec^{ion} 13A. NOTICE AND ANALYSIS OF EXAMINATION RESULTS. (a)
25 Within 30 days after the day on which a license examination is
26 administered under this Act, the board shall notify each examinee
27 of the results of the examination. However, if an examination is

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1 graded or reviewed by a national testing service, the board shall
2 notify the examinee of the results of the examination within two
3 weeks after the day that the board receives the results from the
4 testing service. If it is foreseeable that the notice of the
5 examination results will be delayed for longer than 90 days after
6 the examination date, the board shall notify the examinee of the
7 reason for the delay before the 90th day.

8 "(b) If requested in writing by a person who fails a license
9 examination administered under this Act, the board shall furnish
10 the person with an analysis of the person's performance on the
11 examination."

12 "Section 19A. CONFIDENTIALITY OF EXAMINATION RESULTS. (a)
13 Except as provided by Subsection (c) of this section, a licensed
14 polygraph examiner, licensed trainee, or employee of a licensed
15 polygraph examiner may not disclose to another person information
16 acquired from a polygraph examination.

17 "(b) Except as provided by Subsection (d) of this section, a
18 person for whom a polygraph examination is conducted or an employee
19 of the person may not disclose to another person information
20 acquired from the examination.

21 "(c) A licensed polygraph examiner, licensed trainee, or
22 employee of a licensed polygraph examiner may disclose information^{14/15}
23 acquired from a polygraph examination to:

24 "(1) the examinee or any other person specifically designated
25 in writing by the examinee;

26 "(2) the person, firm, corporation, partnership, business
27 entity, or governmental agency that requested the examination;

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1 “(3) members^b or their agents^b of governmental agencies such
2 as federal, state, county, or municipal agencies that license,
3 supervise, or control the activities of polygraph examiners;

4 “(4) other polygraph examiners in private consultation, all
5 of whom will adhere to this section; or

6 “(5) others as may be required by due process of law.

7 “(d) A person for whom a polygraph examination is conducted
8 or an employee of the person may disclose information acquired from
9 the examination to a person described by ^{Subdivisions (1) through (5) of} Subsection^A ~~(c) (1) (5)~~ of
10 this section.

11 “(e) The board or any other governmental agency that acquires
12 information from a polygraph examination under ^{Subdivision (3) of} Subsection ~~(c) (3)~~ of
13 this section shall keep the information confidential.

14 “^{Section} 19B. INFORMATION ABOUT COMPLAINTS. (a) The board
15 shall keep an information file about each complaint filed with the
16 board relating to a licensee.

17 “(b) If a written complaint is filed with the board relating
18 to a licensee, the board, at least as frequently as quarterly,
19 shall notify the complainant of the status of the complaint until
20 its final disposition unless the notification would jeopardize an
21 undercover investigation. “ 15/16

22 “^{Section} 24A. CONSUMER INFORMATION. (a) The board shall
23 prepare information of consumer interest describing the regulatory
24 functions of the board^b and describing the board's procedures by
25 which consumer complaints are filed with and resolved by the board.
26 The board shall make the information available to the general
27 public and appropriate state agencies.

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1 (b) Each written contract for the services in this state of
2 a licensed polygraph examiner and each waiver of liability that is
3 signed by the subject of a polygraph examination shall contain the
4 name, mailing address, and telephone number of the board. "

5 SECTION 5. A rule adopted by the Polygraph Examiners Board
6 before September 1, 1981, that conflicts with the Polygraph
7 Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes),
8 as amended by this Act, is void. Within 90 days after September 1,
9 1981, the board shall repeal the rule.

10 SECTION 6. (a) A person holding office as a member of the
11 Polygraph Examiners Board on the effective date of this Act
12 continues to hold the office for the term for which the member was
13 originally appointed.

14 (b) The governor shall appoint two public members to fill
15 the offices of the incumbent members who are not polygraph
16 examiners in the commercial field and whose terms expire June 18,
17 1983, and June 18, 1985.

18 SECTION 7. This Act takes effect September 1, 1981.

19 SECTION 8. The importance of this legislation and the
20 crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the ^{16/17}
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.

March 16 1981 Engrossed

Patsy Spaw
Engrossing Clerk

I certify that the attached is a true and correct
copy of S.B. 441, which was
received from the Senate on 3-16-81, and
referred to the Committee on Government

Becky Murray
Chief Clerk of the House

By: Doggett

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A BILL TO BE ENTITLED

AN ACT

relating to the administration and continuation of the Polygraph
Examiners Board and to regulation of polygraph examiners, trainees,
and their employees; relating to confidentiality of results of
polygraph examinations; relating to certain information; providing
penalties; amending the Polygraph Examiners Act, as amended
(Article 4413(29cc), Vernon's Texas Civil Statutes), by amending
Sections 5, 6, 8, 9, 12, 14, 17, 19, 22, 23, and 26 and by adding
Sections 13A, 19A, 19B, and 24A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5, Polygraph Examiners Act, as amended
(Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by
amending Subsections (a), (b), and (e) and by adding Subsections
(f), (g), (h), and (i) to read as follows:

"(a) There is hereby established in the Department of Public
Safety [~~Engineering--Extension--Service--Police--Training--Division--~~
~~Texas--A-&M--University--System~~] a Polygraph Examiners Board
consisting of six members who shall be citizens of the United
States and residents of the state for at least two years prior to
appointment. Four members[~~7--all--of--whom~~] shall each have been
engaged for a period of five consecutive years as a polygraph
examiner prior to appointment to the board, and at the time of
appointment as an active polygraph examiner. Two members must be
representatives of the general public. A person is eligible for
appointment as a public member if the person and the person's
spouse are not licensed by an occupational regulatory agency in the

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1 field of polygraph examining, are not employed by and do not
2 participate in the management of an agency or business entity
3 related to the field of polygraph examining, and do not have, other
4 than as consumers, a financial interest in a business entity
5 related to the field of polygraph examining. No two board members
6 may be employed by the same person or agency. Two of the [~~At least~~
7 ~~two~~] members who are polygraph examiners must be qualified
8 examiners of a governmental law enforcement agency, one of which
9 shall be the supervisor of the polygraph section of the Department
10 of Public Safety, and [~~at least~~] two of the members who are
11 polygraph examiners must be qualified polygraph examiners in the
12 commercial field. The members shall be appointed by the Governor
13 of the State of Texas with the advice and consent of the Senate for
14 a term of six years. [~~The terms of office of members appointed to~~
15 ~~the initial board are two for two years, two for four years, and~~
16 ~~two for six years.~~] Any vacancy in an unexpired term shall be
17 filled by appointment of the Governor with the advice and consent
18 of the Senate for the unexpired term.

19 "(b) The Department of Public Safety shall provide to the
20 board staff persons necessary to perform the administrative
21 functions of the board. The [~~number of employees and the salaries~~
22 ~~of each, including~~] travel [~~and expense~~] allowance of the members
23 of the board [~~Board~~] shall be as fixed in the General Appropriation
24 Act [~~Bill~~]. Each member of the board is entitled to a per diem as
25 set by legislative appropriation for each day that the member
26 engages in the business of the board."

27 "(e) The Polygraph Examiners Board is subject to the Texas

1 Sunset Act, as amended (Article 5429k, Vernon's Texas Civil
2 Statutes); and unless continued in existence as provided by that
3 Act the board is abolished, and this Act expires effective
4 September 1, 1993 [1981].

5 "(f) A member or employee of the board may not be an
6 officer, employee, or paid consultant of a trade association in the
7 polygraph examining field. A member or employee of the board may
8 not be related within the second degree by affinity or within the
9 second degree by consanguinity to a person who is an officer,
10 employee, or paid consultant of a trade association in the
11 regulated industry.

12 "(g) A person who is required to register as a lobbyist
13 under Chapter 422, Acts of the 63rd Legislature, Regular Session,
14 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes),
15 may not serve as a member of the board or act as the general
16 counsel to the board.

17 "(h) It is a ground for removal from the board if a member:

18 "(1) does not have at the time of appointment the
19 qualifications required by Subsection (a) of this section for
20 appointment to the board;

21 "(2) does not maintain during the service on the board the
22 qualifications required by Subsection (a) of this section for
23 appointment to the board; or

24 "(3) violates a prohibition established by Subsection (f) or
25 (g) of this section.

26 "(i) If a ground for removal of a member from the board
27 exists, the board's actions taken during the existence of the

ground for removal are not invalid for that reason."

SECTION 2. Section 6, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

"(d) The board may not adopt rules restricting competitive bidding or advertising by a licensee of the board except to prohibit false, misleading, or deceptive practices by the licensee. The board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

"(1) restricts the licensee's use of any medium for advertising;

"(2) restricts the licensee's personal appearance or use of his personal voice in an advertisement;

"(3) relates to the size or duration of an advertisement by the licensee; or

"(4) restricts the licensee's advertisement under a trade name."

SECTION 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 8. EXAMINER'S LICENSE QUALIFICATIONS. (a) A person is qualified to receive a license as an examiner

~~"(1) [who-is-at-least-21-years-of-age,-and~~

~~"[(2)--who-is-a-citizen-of-the-United-States,-and~~

~~"[(3)--who--establishes--that--he--is--a--person--of-honesty, truthfulness,-integrity,-and-moral-fitness,-and~~

~~"[(4)] who has not been convicted of a felony or a~~

1 misdemeanor involving moral turpitude; and

2 "(2) [(5)] who holds a baccalaureate degree from a college
3 or university accredited by an organization that the board
4 designates and that the board determines has accreditation
5 standards to ensure a high level of scholarship for students [the
6 American---Association--of--Collegiate--Registrars--and--Admissions
7 Officers], or in lieu thereof, has five consecutive years of active
8 investigative experience immediately preceding his application; and

9 "(3) [(6)] who is a graduate of a polygraph examiners course
10 approved by the board and has satisfactorily completed not less
11 than six months of internship training, provided that if the
12 applicant is not a graduate of an approved polygraph examiners
13 course, satisfactory completion of not less than 12 months of
14 internship training may satisfy this subdivision; and

15 "(4) [(7)] who has passed an examination conducted by the
16 board, or under its supervision, to determine his competency to
17 obtain a license to practice as an examiner.

18 "(b) [(8)] Prior to the issuance of a license, the applicant
19 must furnish to the board evidence of a surety bond or insurance
20 policy. Said surety bond or insurance policy shall be in the sum
21 of \$5,000.00 and shall be conditioned that the obligor therein will
22 pay to the extent of the face amount of such surety bond or
23 insurance policy all judgments which may be recovered against the
24 licensee by reason of any wrongful or illegal acts committed by him
25 in the course of his examinations.

26 "(c) The board by rule shall establish the criteria by which
27 it determines whether an applicant complies with the active

1 investigative experience requirement established by Subdivision (2)
2 of Subsection (a) of this section.

3 "Section 9. ACQUISITION OF LICENSE BY PRESENT EXAMINERS. On
4 the effective date of this Act, any person who held a license
5 issued by the board [Board] established or attempted to be
6 established by Chapter 441, Acts of the 59th Legislature, Regular
7 Session, 1965 [Acts,--1965,--59th-Leg,--R-S,--Ch--441,--p--888], and
8 whose license was in effect on the date on which said Act was held
9 invalid, shall be automatically licensed hereunder until such date
10 as his license under the Act aforesaid has expired and thereafter
11 may renew his license on payment of the fee herein provided. The
12 applicant must also satisfy the provisions of Subsection (b) of
13 Section 8 [{8}] of this Act."

14 "Section 12. APPLICANT WITH OUT-OF-STATE LICENSE. The board
15 may waive any license requirement for an applicant with a valid
16 license from another state having license requirements
17 substantially equivalent to those of this state. [An-applicant-who
18 is-a-polygraph-examiner-licensed-under-the-laws-of-another-state-or
19 territory-of-the-United-States-may-be-issued-a-license-without
20 examination-by-the-board,-in-its-discretion,-upon-payment-of-a-fee
21 of-\$60-and-the-production-of-satisfactory-proof-that

22 "[{1}--he-is-at-least-21-years-of-age,-and

23 "[{2}--he-is-a-citizen-of-the-United-States,-and

24 "[{3}--he-is-of-good-moral-character,-and

25 "[{4}--the--requirements--for--the--licensing--of--polygraph
26 examiner-in-such-particular-state-or-territory-of-the-United-States
27 were-at-the-date-of-the-applicant's-licensing-therein-substantially

equivalent to the requirements now in force in this state, and

"[(5) -- the --- applicant --- had --- lawfully --- engaged --- in --- the administration of polygraph examinations under -- the -- laws -- of -- such state -- or -- territory for at least two years prior to his application for license hereunder, -- and

"[(6) -- such -- other -- state --- or --- territory --- grants --- similar reciprocity to license holders of this state, -- and

"[(7) -- he has complied with Section 11 of this Act.]"

"Section 14. [EXAMINATION-AND-LICENSE] FEES. (a) The board shall establish reasonable and necessary fees for the administration of this Act. [The fee to be paid -- by -- an -- applicant for -- an -- examination to determine his fitness to receive a polygraph examiner's license is \$20, which is not to be credited -- as -- payment against the license fee.]

"(b) [The --- fee --- to -- be -- paid -- for -- an -- original -- polygraph examiner's license is \$60.

"[(c) -- The fee to be paid for an internship license -- is -- \$30.

"[(d) -- The -- fee -- to -- be -- paid for the issuance of a duplicate polygraph examiner's license is \$10.

"[(e) -- The fee to be paid for a polygraph examiner's -- renewal license is \$25.

"[(f) -- The -- fee -- to -- be -- paid for the extension or renewal of an internship license is \$25.

"[(g) -- The fee to be paid for a duplicate internship -- license is \$10.

"[(h)] The fees required by this Act may be paid by the governmental agency employing the examiner."

"Section 17. TERMINATION AND RENEWAL OF EXAMINER'S LICENSE.

(a) Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually.

"(b) A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee.

"(c) If a person's license has been expired for not longer than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

"(d) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

"(e) If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(f) A [as--prescribed--by-the-board--A-polygraph-examiner whose-license-has-expired-may-at-any-time-within--two--years--after the-expiration-thereof-obtain-a-renewal-license-without-examination by--making--a--renewal--application-therefor-and-satisfying-Section 8(2)--(3)--and-(4)--However,--any] polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called

1 into service or training, or in training or education under the
 2 supervision of the United States preliminary to induction into the
 3 military service, may have his license renewed without examination
 4 if within two years after termination of such service, training, or
 5 education except under condition other than honorable, he pays to
 6 the board the required renewal fee and furnishes the board with an
 7 affidavit to the effect that he has been so engaged and that his
 8 service, training, or education has been so terminated. [~~Section~~
 9 ~~8(2), (3) and (4) of this Act must also be satisfied.~~]"

10 "Section 19. REFUSAL, PROBATION, REPRIMAND, SUSPENSION,
 11 REVOCATION--GROUNDS. The board shall [may] refuse to issue a
 12 license, shall revoke or suspend a license, shall reprimand a
 13 licensee, or may probate a license suspension [~~or may suspend or~~
 14 ~~revoke a license~~] on any one or more of the following grounds:

15 "(1) for failing to inform a subject to be examined as to
 16 the nature of the examination;

17 "(2) for failing to inform a subject to be examined that his
 18 participation in the examination is voluntary;

19 "(3) material misstatement in the application for original
 20 license or in the application for any renewal license under this
 21 Act;

22 "(4) wilful disregard or violation of this Act or of any
 23 regulation or rule issued pursuant thereto, including, but not
 24 limited to, wilfully making a false report concerning an
 25 examination for polygraph examination purposes;

26 "(5) if the holder of any license has been adjudged guilty
 27 of the commission of a felony or a misdemeanor involving moral

1 turpitude;

2 "(6) making any wilful misrepresentation or false promises
3 or causing to be printed any false or misleading advertisement for
4 the purpose of directly or indirectly obtaining business or
5 trainees;

6 "(7) having demonstrated unworthiness or incompetency to act
7 as a polygraph examiner as defined by this Act;

8 "(8) allowing one's license under this Act to be used by any
9 unlicensed person in violation of the provisions of this Act;

10 "(9) wilfully aiding or abetting another in the violation of
11 this Act or any regulation or rule issued pursuant thereto;

12 "(10) where the license holder has been adjudged as a
13 habitual drunkard or mentally incompetent as provided in the
14 Probate Code;

15 "(11) failing, within a reasonable time, to provide
16 information requested by the secretary as the result of a formal
17 complaint to the board which would indicate a violation of this
18 Act; [er]

19 "(12) failing to inform the subject of the results of the
20 examination if so requested; or

21 "(13) violating Subsection (a) of Section 19A of this Act
22 relating to the confidentiality of information acquired from an
23 examination."

24 "Section 22. BOARD HEARING. (a) If the board proposes to
25 refuse a person's application for a license or to suspend or revoke
26 a person's license, the person is entitled to a hearing before the
27 board. [~~When there is cause to refuse an application or to suspend~~

1 or--revoke--the-license-of-any-polygraph-examiner,-the-board-shall,
 2 not-less-than-30-days-before--refusal,-suspension,-or--revocation
 3 action--is--taken,-notify--such-person-in-writing,-in-person-or-by
 4 certified-mail-at-the-last-address-supplied-to-the--board--by--such
 5 person,-of--such-impending-refusal,-suspension,-or-revocation,-the
 6 reasons-therefor,-and-of-his-right-to-an-administrative-hearing-for
 7 the--purpose--of--determining--whether--or--not--the--evidence---is
 8 sufficient-to-warrant-the-refusal,-suspension,-or-revocation-action
 9 proposed--to--be--taken-by-the-board.-If,-within-20-days-after-the
 10 personal-service-of-such-notice-or-such-notice-has--been--deposited
 11 in--the--United--States--mail,-such--person-has-not-made-a-written
 12 request-to-the-board-for-this-administrative-hearing,-the-board--is
 13 authorized-to-suspend-or-revoke-the-polygraph-examiner's-license-of
 14 such--person--without-a-hearing.-Upon-receipt-by-the-board-of-such
 15 written-request-of-such-person-within-the-20-day-period-as-set--out
 16 above,-an--opportunity--for--an--administrative--hearing--shall-be
 17 afforded-as-early-as-is-practicable.-In-no-case-shall-the--hearing
 18 be--held--less--than--10--days--after-written-notification-thereof,
 19 including-a-copy-of-the-charges,-shall-have-been-given--the--person
 20 by--personal--service-or-by-certified-mail-sent-to-the-last-address
 21 supplied--to--the--board--by--the--applicant---or---licensee.---The
 22 administrative-hearing-in-such-cases-shall-be-before-the-board.]

23 "(b) Proceedings for the refusal, suspension, or revocation
 24 of a license are governed by the Administrative Procedure and Texas
 25 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
 26 Statutes). [The--board--shall-conduct-the-administrative-hearings
 27 and-it-is-authorized-to-administer-oaths-and--issue--subpoenas--for

the--attendance--of--witnesses--and--the--production--of--relevant--books,
papers,--documents,--etc. --On--the--basis--of--the--evidence--submitted--at
the--hearing,--the--board--shall--take--whatever--action--it--deems
necessary--in--refusing--the--application--or--suspending--or--revoking--the
license.]

"Section 23. JUDICIAL REVIEW. Any person dissatisfied with
the action of the board in refusing his application or suspending
or revoking his license, or any other action of the board, may
appeal the action of the board by filing a petition within the
appropriate time [30-days-thereafter] in the district court in the
county where the person resides or in the district court of Travis
County, Texas. An appeal of an action of the board is governed by
the Administrative Procedure and Texas Register Act, as amended
(Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review
of an action of the board shall be conducted under the substantial
evidence rule. [In-all-appeals-prosecuted-in-any-of-the-courts-of
this-state-pursuant-to-the-provisions--of--this--Act,--such--trials
shall--be--de--novo--as--that--term--is--used--and--understood--in--appeals
from-justice-of-the-peace-courts-to-county-courts. ---When--such--an
appeal--is--filed--and--the--court--thereby--acquires--jurisdiction,--all
administrative--or--executive--action--taken--prior--thereto--shall--be
null--and--void--and--of--no--force--and--effect,--and--the--rights--of--the
parties--thereto--shall--be--determined--by--the--court--upon--a--trial--of
the-matters-in-controversy-under-rules-governing-the-trial-of-other
civil-suits-in-the-same-manner-and-to-the-same-extent-as-though-the
matter--had--been--committed--to--the--courts--in--the--first--instance--and
there-had--been--no--intervening--administrative--or--executive--action--or

1 decision--Under no circumstances shall--the--substantial--evidence
 2 rule--as--interpreted--and--applied--by--the--courts--of--Texas--in--other
 3 cases--ever--be--used--or--applied--to--appeals--prosecuted--under--the
 4 provisions--of--this--Act.---The--Legislature--hereby--specifically
 5 declares--that--the--provisions--of--this--section--shall--not--be--severable
 6 from--the--balance--of--this--Act,--and--further--specifically--declares
 7 that--this--Act--would--not--have--been--passed--without--the--inclusion--of
 8 this--section.---If--this--section,--or--any--part--thereof,--is--for--any
 9 reason--ever--held--by--any--court--to--be--invalid,--unconstitutional--or
 10 inoperative--in--any--way,--such--holding--shall--apply--to--this--entire
 11 Act,--and--in--such--event--this--entire--Act--shall--be--null,--void--and--of
 12 no--force--and--effect.]"

13 "Section 26. PENALTIES. (a) Any person who violates any
 14 provision of this Act or any person who falsely states or
 15 represents that he has been or is a polygraph examiner or trainee
 16 or that he is qualified to apply instrumentation to the detection
 17 of deception or verification of truth of statements shall be guilty
 18 of a misdemeanor and upon conviction thereof shall be punished by a
 19 fine of not less than \$100 nor more than \$1,000 or by imprisonment
 20 in the county jail for a term of not to exceed six months, or both.

21 "(b) A person commits an offense if the person
 22 intentionally, knowingly, recklessly, or with criminal negligence
 23 violates Section 19A of this Act relating to the confidentiality of
 24 information acquired from a polygraph examination. An offense
 25 under this subsection is a Class B misdemeanor."

26 SECTION 4. The Polygraph Examiners Act, as amended (Article
 27 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding

Sections 13A, 19A, 19B, and 24A to read as follows:

"Section 13A. NOTICE AND ANALYSIS OF EXAMINATION RESULTS.

(a) Within 30 days after the day on which a license examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify the examinee of the results of the examination within two weeks after the day that the board receives the results from the testing service. If it is foreseeable that the notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

"(b) If requested in writing by a person who fails a license examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

"Section 19A. CONFIDENTIALITY OF EXAMINATION RESULTS. (a) Except as provided by Subsection (c) of this section, a licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may not disclose to another person information acquired from a polygraph examination.

"(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

"(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information

1 acquired from a polygraph examination to:

2 "(1) the examinee or any other person specifically
3 designated in writing by the examinee;

4 "(2) the person, firm, corporation, partnership, business
5 entity, or governmental agency that requested the examination;

6 "(3) members or their agents of governmental agencies such
7 as federal, state, county, or municipal agencies that license,
8 supervise, or control the activities of polygraph examiners;

9 "(4) other polygraph examiners in private consultation, all
10 of whom will adhere to this section; or

11 "(5) others as may be required by due process of law.

12 "(d) A person for whom a polygraph examination is conducted
13 or an employee of the person may disclose information acquired from
14 the examination to a person described by Subdivisions (1) through
15 (5) of Subsection (c) of this section.

16 "(e) The board or any other governmental agency that
17 acquires information from a polygraph examination under Subdivision
18 (3) of Subsection (c) of this section shall keep the information
19 confidential.

20 "Section 19B. INFORMATION ABOUT COMPLAINTS. (a) The board
21 shall keep an information file about each complaint filed with the
22 board relating to a licensee.

23 "(b) If a written complaint is filed with the board relating
24 to a licensee, the board, at least as frequently as quarterly,
25 shall notify the complainant of the status of the complaint until
26 its final disposition unless the notification would jeopardize an
27 undercover investigation."

1 "Section 24A. CONSUMER INFORMATION. (a) The board shall
2 prepare information of consumer interest describing the regulatory
3 functions of the board and describing the board's procedures by
4 which consumer complaints are filed with and resolved by the board.
5 The board shall make the information available to the general
6 public and appropriate state agencies.

7 "(b) Each written contract for the services in this state of
8 a licensed polygraph examiner and each waiver of liability that is
9 signed by the subject of a polygraph examination shall contain the
10 name, mailing address, and telephone number of the board."

11 SECTION 5. A rule adopted by the Polygraph Examiners Board
12 before September 1, 1981, that conflicts with the Polygraph
13 Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes),
14 as amended by this Act, is void. Within 90 days after September 1,
15 1981, the board shall repeal the rule.

16 SECTION 6. (a) A person holding office as a member of the
17 Polygraph Examiners Board on the effective date of this Act
18 continues to hold the office for the term for which the member was
19 originally appointed.

20 (b) The governor shall appoint two public members to fill
21 the offices of the incumbent members who are not polygraph
22 examiners in the commercial field and whose terms expire June 18,
23 1983, and June 18, 1985.

24 SECTION 7. This Act takes effect September 1, 1981.

25 SECTION 8. The importance of this legislation and the
26 crowded condition of the calendars in both houses create an
27 emergency and an imperative public necessity that the

S.B. No. 441

1 constitutional rule requiring bills to be read on three several
2 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1ST PRINTING

F

By Doggett (Bock)

S.B. No. 441

Substitute the following for S.B. No. 441:

By Evans

C.S.S.B. No. 441

A BILL TO BE ENTITLED

AN ACT

relating to continuation of the Polygraph Examiners Board and regulation of the operators of devices that are intended to determine if a person is telling the truth and to disclosure of the information acquired from the devices; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5, Polygraph Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (e) and by adding Subsections (f), (g), (h), (i), (j), and (k) to read as follows:

(a) There is hereby established [~~in--the--Engineering Extension-Service, Police-Training-Division, Texas--A&M--University System,~~] a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment. Four members[~~7--all--of whom~~] shall each have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. Two members must be representatives of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of polygraph examining, are not employed by and do not participate in the management of an agency or business entity related to the field of polygraph examining, and

1 do not have, other than as consumers, a financial interest in a
2 business entity related to the field of polygraph examining. No
3 two board members may be employed by the same person or agency.
4 Two of the [At-least-two] members who are polygraph examiners must
5 be qualified examiners of a governmental law enforcement agency,
6 one of which shall be the supervisor of the polygraph section of
7 the Department of Public Safety, and [at-least] two of the members
8 who are polygraph examiners must be qualified polygraph examiners
9 in the commercial field. The members shall be appointed by the
10 Governor of the State of Texas with the advice and consent of the
11 Senate for a term of six years. [The-terms-of-office-of-members
12 appointed-to-the-initial-board-are-two-fer-two-years;-two-fer--four
13 years;--and--two--fer-six-years-] Any vacancy in an unexpired term
14 shall be filled by appointment of the Governor with the advice and
15 consent of the Senate for the unexpired term. Appointments shall
16 be made without regard to the race, creed, sex, religion, or
17 national origin of the appointees.

18 (b) The board shall contract with the Department of Public
19 Safety for the administrative functions of the board including the
20 collection of all fees and money due and the payment of all
21 expenses, including travel expenses of board members.

22 Each member of the Board is entitled to a per diem as set by
23 legislative appropriation for each day that the member engages in
24 the business of the Board. A member may not receive any
25 compensation for travel expenses, including expenses for meals and
26 lodging other than transportation expenses. [The---number---of
27 employees--and--the--salaries-of-each;-including-travel-and-expense

1 ~~allowance--of]~~ A member is entitled to compensation for
2 transportation expenses as prescribed by the general appropriations
3 act. [the--members--of--the--Board--shall--be--as--fixed--in--the--General
4 Appropriation-Bill-]

5 (e) The Polygraph Examiners Board is subject to the Texas
6 Sunset Act, as amended (Article 5429k, Vernon's Texas Civil
7 Statutes); and unless continued in existence as provided by that
8 Act the board is abolished, and this Act expires effective
9 September 1, 1993 [1981].

10 (f) A member or employee of the board may not be an officer,
11 employee, or paid consultant of a trade association in the
12 polygraph examining field. A member or employee of the board may
13 not be related within the second degree by affinity or
14 consanguinity to a person who is an officer, employee, or paid
15 consultant of a trade association in the regulated industry.

16 (g) A person who is required to register as a lobbyist under
17 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
18 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
19 not serve as a member of the board or act as the general counsel to
20 the board.

21 (h) It is a ground for removal from the board if a member:

22 (1) does not have at the time of appointment the
23 qualifications required by Subsection (a) of this section for
24 appointment to the board;

25 (2) does not maintain during his service on the board the
26 qualifications required by Subsection (a) of this section for
27 appointment to the board;

1 (3) violates a prohibition prescribed by Subsection (f) or
2 (g) of this section; or

3 (4) fails to attend at least half of the regularly scheduled
4 board meetings held in a calendar year, excluding meetings held
5 while the person was not a board member.

6 (i) If a ground for removal of a member from the board
7 exists, the board's actions taken during the existence of the
8 ground for removal are not invalid for that reason.

9 (j) The board is subject to the open meetings law, Chapter
10 271, Acts of the 60th Legislature, Regular Session, 1967, as
11 amended (Article 6252-17, Vernon's Texas Civil Statutes), and the
12 Administrative Procedure and Texas Register Act, as amended
13 (Article 6252-13a, Vernon's Texas Civil Statutes).

14 (k) The board may recognize, prepare, or implement
15 continuing education programs for polygraph examiners and trainees.
16 Participation in the programs is voluntary.

17 SECTION 2. Section 6, Polygraph Examiners Act (Article
18 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending
19 Subsection (a) and by adding Subsections (d) and (e) to read as
20 follows:

21 (a) The board shall issue regulations consistent with the
22 provisions of this Act for the administration and enforcement of
23 this Act and shall prescribe forms which shall be issued in
24 connection therewith. The board may not adopt rules restricting
25 competitive bidding or advertising by a licensee of the board
26 except to prohibit false, misleading, or deceptive practices by the
27 licensee. The board may not include in its rules to prohibit

1 false, misleading, or deceptive practices by a licensee a rule
2 that:

3 (1) restricts the licensee's use of any medium for
4 advertising;

5 (2) restricts the licensee's personal appearance or use of
6 his voice in an advertisement;

7 (3) relates to the size or duration of an advertisement by
8 the licensee; or

9 (4) restricts the licensee's advertisement under a trade
10 name.

11 (d) During each fiscal biennium, the state auditor shall
12 audit the financial transactions of the Department of Public Safety
13 that relate to the administration of this Act.

14 (e) On or before January 1 of each year, the Department of
15 Public Safety shall make in writing to the governor and the
16 presiding officer of each house of the legislature a complete and
17 detailed report accounting for all funds received and disbursed by
18 the department under this Act during the preceding year.

19 (f) If the appropriate standing committees of both houses of
20 the legislature acting under Subsection (g), Section 5,
21 Administrative Procedure and Texas Register Act, as amended
22 (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the
23 board statements opposing adoption of a rule under that section,
24 the rule may not take effect, or if the rule has already taken
25 effect, the rule is repealed effective on the date the board
26 receives the committee's statements.

27 SECTION 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26,

1 Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's
2 Texas Civil Statutes), are amended to read as follows:

3 Sec. 8. EXAMINER'S LICENSE QUALIFICATIONS. (a) A person is
4 qualified to receive a license as an examiner

5 (1) [~~who is at least 21 years of age, and~~

6 [~~{2}--who is a citizen of the United States, and~~

7 [~~{3}--who establishes that he is a person of honesty,~~
8 ~~truthfulness, integrity, and moral fitness, and~~

9 [~~{4}~~] who has not been convicted of a felony or a
10 misdemeanor involving moral turpitude; and

11 (2) [~~{5}~~] who holds a baccalaureate degree from a college or
12 university accredited by an organization that the board designates
13 and that the board determines has accreditation standards to ensure
14 a high level of scholarship for students [~~the American Association~~
15 ~~of Collegiate Registrars and Admissions Officers~~], or in lieu
16 thereof, has five consecutive years of active investigative
17 experience immediately preceding his application; and

18 (3) [~~{6}~~] who is a graduate of a polygraph examiners course
19 approved by the board and has satisfactorily completed not less
20 than six months of internship training, provided that if the
21 applicant is not a graduate of an approved polygraph examiners
22 course, satisfactory completion of not less than 12 months of
23 internship training may satisfy this subdivision; and

24 (4) [~~{7}~~] who has passed an examination conducted by the
25 board, or under its supervision, to determine his competency to
26 obtain a license to practice as an examiner.

27 (b) [~~{8}~~] Prior to the issuance of a license, the applicant

1 must furnish to the board evidence of a surety bond or insurance
 2 policy. Said surety bond or insurance policy shall be in the sum
 3 of \$5,000.00 and shall be conditioned that the obligor therein will
 4 pay to the extent of the face amount of such surety bond or
 5 insurance policy all judgments which may be recovered against the
 6 licensee by reason of any wrongful or illegal acts committed by him
 7 in the course of his examinations.

8 (c) The board by rule shall establish the criteria by which
 9 it determines whether an applicant complies with the active
 10 investigative experience requirement established by Subdivision (2)
 11 of Subsection (a) of this section.

12 Sec. 9. ACQUISITION OF LICENSE BY PRESENT EXAMINERS. On the
 13 effective date of this Act, any person who held a license issued by
 14 the board [Board] established or attempted to be established by
 15 Chapter 441, Acts of the 59th Legislature, Regular Session, 1965
 16 [Acts,--1965,--59th-Leg.,--R. S.,--Ch. 441,--p. 888], and whose license
 17 was in effect on the date on which said Act was held invalid, shall
 18 be automatically licensed hereunder until such date as his license
 19 under the Act aforesaid has expired and thereafter may renew his
 20 license on payment of the fee herein provided. The applicant must
 21 also satisfy the provisions of Subsection (b) of Section 8 [(8)] of
 22 this Act.

23 Sec. 12. APPLICANT WITH OUT-OF-STATE LICENSE. The board may
 24 waive any license requirement for an applicant with a valid license
 25 from another state having license requirements substantially
 26 equivalent to those of this state. [An--applicant--who--is--a
 27 polygraph--examiner--licensed--under--the--laws--of--another--state--or

territory-of-the-United-States-may--be--issued--a--license--without
examination--by-the-board,-in-its-discretion,-upon-payment-of-a-fee
of-\$60-and-the-production-of-satisfactory-proof-that

[(1)--he-is-at-least-21-years-of-age,-and

[(2)--he-is-a-citizen-of-the-United-States,-and

[(3)--he-is-of-good-moral-character,-and

[(4)--the--requirements--for--the--licensing---of---polygraph
examiner-in-such-particular-state-or-territory-of-the-United-States
were-at-the-date-of-the-applicant's-licensing-therein-substantially
equivalent-to-the-requirements-now-in-force-in-this-state,-and

[(5)--the---applicant---had---lawfully---engaged---in---the
administration-of-polygraph-examinations-under--the--laws--of--such
state--or-territory-for-at-least-two-years-prior-to-his-application
for-license-hereunder,-and

[(6)--such--other---state---or---territory---grants---similar
reciprocity-to-license-holders-of-this-state,-and

[(7)--he-has-complied-with-Section-11-of-this-Act-]

Sec. 14. [EXAMINATION--AND--LICENSE] FEES. (a) The board
shall establish reasonable and necessary fees for the
administration of this Act, in amounts not to exceed:

1. Polygraph examiners license	225
2. Internship license	115
3. Duplicate license	40
4. Renewal fee for examiner's license	210
5. Extension or renewal of an internship license	40
6. Examination fee	75

[The-fee-to-be-paid-by-an-applicant-for-an-examination-to-determine

1 his-fitness-to-receive-a-polygraph-examiner's-license-is-\$20,-which
2 is-not-to-be-credited-as-payment-against-the-license-fee-]

3 (b) [The-fee-to-be-paid-for-an-original-polygraph-examiner's
4 license-is-\$60-

5 [(e) --The-fee-to-be-paid-for-an-internship-license-is-\$30-

6 [(d) --The--fee--to--be--paid--for-the-issuance-of-a-duplicate
7 polygraph-examiner's-license-is-\$10-

8 [(e) --The-fee-to-be-paid-for-a-polygraph--examiner's--renewal
9 license-is-\$25-

10 [(f) --The--fee--to-be-paid-for-the-extension-or-renewal-of-an
11 internship-license-is-\$25-

12 [(g) --The-fee-to-be-paid-for-a-duplicate--internship--license
13 is-\$10-

14 [(h)] The fees required by this Act may be paid by the
15 governmental agency employing the examiner.

16 Sec. 17. TERMINATION AND RENEWAL OF EXAMINER'S LICENSE. (a)
17 Each polygraph examiner's license shall be issued for the term of
18 one year and shall, unless suspended or revoked, be renewed
19 annually.

20 (b) A person may renew his unexpired license by paying to
21 the board before the expiration date of the license the required
22 renewal fee.

23 (c) If a person's license has been expired for not more than
24 90 days, the person may renew the license by paying to the board
25 the required renewal fee and a fee that is one-half of the
26 examination fee for the license.

27 (d) If a person's license has been expired for more than 90

1 days but less than two years, the person may renew the license by
 2 paying to the board all unpaid renewal fees and a fee that is equal
 3 to the examination fee for the license.

4 (e) If a person's license has been expired for two years or
 5 more, the person may not renew the license. The person may obtain
 6 a new license by submitting to reexamination and complying with the
 7 requirements and procedures for obtaining an original license.

8 (f) A [as-prescribed-by-the-board---A--polygraph--examiner
 9 whose--license--has--expired--may--at--any--time--within--two--years--after
 10 the--expiration--thereof--obtain--a--renewal--license--without--examination
 11 by--making--a--renewal--application--therefor--and--satisfying--Section
 12 8(2)--(3)--and--(4)--However,--any] polygraph examiner whose license
 13 expired while he was in the federal service on active duty with the
 14 armed forces of the United States, or the national guard called
 15 into service or training, or in training or education under the
 16 supervision of the United States preliminary to induction into the
 17 military service, may have his license renewed without examination
 18 if within two years after termination of such service, training, or
 19 education except under condition other than honorable, he pays to
 20 the board the required renewal fee and furnishes the board with an
 21 affidavit to the effect that he has been so engaged and that his
 22 service, training, or education has been so terminated. [Section
 23 8(2)--(3)--and--(4)--of--this--Act--must--also--be--satisfied--]

24 Sec. 19. REFUSAL, PROBATION, REPRIMAND, SUSPENSION,
 25 REVOCATION--GROUNDS. The board shall [may] refuse to issue a
 26 license, shall revoke or suspend a license, shall reprimand a
 27 licensee, or may probate a license suspension [~~or--may--suspend--or~~

1 ~~revoke-a-license~~] on any one or more of the following grounds:

2 (1) for failing to inform a subject to be examined as to the
3 nature of the examination;

4 (2) for failing to inform a subject to be examined that his
5 participation in the examination is voluntary;

6 (3) material misstatement in the application for original
7 license or in the application for any renewal license under this
8 Act;

9 (4) wilful disregard or violation of this Act or of any
10 regulation or rule issued pursuant thereto, including, but not
11 limited to, wilfully making a false report concerning an
12 examination for polygraph examination purposes;

13 (5) if the holder of any license has been adjudged guilty of
14 the commission of a felony or a misdemeanor involving moral
15 turpitude;

16 (6) making any wilful misrepresentation or false promises or
17 causing to be printed any false or misleading advertisement for the
18 purpose of directly or indirectly obtaining business or trainees;

19 (7) having demonstrated unworthiness or incompetency to act
20 as a polygraph examiner as defined by this Act;

21 (8) allowing one's license under this Act to be used by any
22 unlicensed person in violation of the provisions of this Act;

23 (9) wilfully aiding or abetting another in the violation of
24 this Act or any regulation or rule issued pursuant thereto;

25 (10) where the license holder has been adjudged as a
26 habitual drunkard or mentally incompetent as provided in the
27 Probate Code;

(11) failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which would indicate a violation of this Act; ~~[or]~~

(12) failing to inform the subject of the results of the examination if so requested; or

(13) violating Subsection (a) of Section 19A of this Act relating to the confidentiality of information acquired from an examination.

Sec. 22. BOARD HEARING. (a) If the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing before the board. ~~[When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension, or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such~~

1 written--request-of-such-person-within-the-20-day-period-as-set-out
 2 above,-an--opportunity--for--an--administrative--hearing--shall--be
 3 afforded--as-early-as-is-practicable--in-no-case-shall-the-hearing
 4 be-held-less-than--10--days--after--written--notification--thereof,
 5 including--a--copy-of-the-charges,-shall-have-been-given-the-person
 6 by-personal-service-or-by-certified-mail-sent-to-the--last--address
 7 supplied---to---the---board--by--the--applicant--or--licensee--The
 8 administrative-hearing-in-such-cases-shall-be-before-the-board.]

9 (b) Proceedings for the refusal, suspension, or revocation
 10 of a license are governed by the Administrative Procedure and Texas
 11 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
 12 Statutes). [The-board-shall-conduct--the--administrative--hearings
 13 and--it--is--authorized-to-administer-oaths-and-issue-subpoenas-for
 14 the-attendance-of-witnesses-and-the-production-of--relevant--books,
 15 papers,-documents,-etc--On-the-basis-of-the-evidence-submitted-at
 16 the--hearing,-the--board--shall--take--whatever--action--it--deems
 17 necessary-in-refusing-the-application-or-suspending-or-revoking-the
 18 license.]

19 Sec. 23. JUDICIAL REVIEW. Any person dissatisfied with the
 20 action of the board in refusing his application or suspending or
 21 revoking his license, or any other action of the board, may appeal
 22 the action of the board by filing a petition within the appropriate
 23 time [30-days-thereafter] in the district court in the county where
 24 the person resides or in the district court of Travis County,
 25 Texas. An appeal of an action of the board is governed by the
 26 Administrative Procedure and Texas Register Act, as amended
 27 (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review

1 of an action of the board shall be conducted under the substantial
 2 evidence rule. [In-all-appeals-prosecuted-in-any-of-the-courts--of
 3 this--state--pursuant--to--the--provisions-of-this-Act,--such-trials
 4 shall-be-de-novo-as-that-term-is-used--and--understood--in--appeals
 5 from--justice--of--the-peace-courts-to-county-courts. --When-such-an
 6 appeal-is-filed-and-the-court-thereby--acquires--jurisdiction,--all
 7 administrative--or--executive--action--taken-prior-thereto-shall-be
 8 null-and-void-and-of-no-force-and-effect,--and--the--rights--of--the
 9 parties--thereto--shall--be-determined-by-the-court-upon-a-trial-of
 10 the-matters-in-controversy-under-rules-governing-the-trial-of-other
 11 civil-suits-in-the-same-manner-and-to-the-same-extent-as-though-the
 12 matter-had-been-committed-to-the-courts-in-the-first--instance--and
 13 there-had-been-no-intervening-administrative-or-executive-action-or
 14 decision. ---Under--no--circumstances-shall-the-substantial-evidence
 15 rule-as-interpreted-and-applied-by-the-courts--of--Texas--in--other
 16 cases--ever--be--used--or--applied--to-appeals-prosecuted-under-the
 17 provisions--of--this--Act. ---The--Legislature--hereby--specifically
 18 declares-that-the-provisions-of-this-section-shall-not-be-severable
 19 from--the--balance--of--this-Act,--and-further-specifically-declares
 20 that-this-Act-would-not-have-been-passed-without-the--inclusion--of
 21 this--section. ---If--this--section,--or-any-part-thereof,--is-for-any
 22 reason-ever-held-by-any-court-to-be--invalid,--unconstitutional--or
 23 inoperative--in--any--way,--such-holding-shall-apply-to-this-entire
 24 Act,--and-in-such-event-this-entire-Act-shall-be-null,--void--and--of
 25 no-force-and-effect.]

26 Sec. 26. PENALTIES. (a) Any person who violates any
 27 provision of this Act or any person who falsely states or

1 represents that he has been or is a polygraph examiner or trainee
2 or that he is qualified to apply instrumentation to the detection
3 of deception or verification of truth of statements shall be guilty
4 of a misdemeanor and upon conviction thereof shall be punished by a
5 fine of not less than \$100 nor more than \$1,000 or by imprisonment
6 in the county jail for a term of not to exceed six months, or both.

7 (b) A person commits an offense if the person intentionally,
8 knowingly, recklessly, or with criminal negligence violates Section
9 19A of this Act relating to the confidentiality of information
10 acquired from a polygraph examination. An offense under this
11 subsection is a Class B misdemeanor.

12 SECTION 4. The Polygraph Examiners Act, as amended (Article
13 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding
14 Sections 13A, 19A, 19B, and 24A to read as follows:

15 Sec. 13A. NOTICE AND ANALYSIS OF EXAMINATION RESULTS. (a)
16 Within 30 days after the date a license examination is administered
17 under this Act, the board shall notify each examinee of the results
18 of the examination. However, if an examination is graded or
19 reviewed by a national testing service, the board shall notify each
20 examinee of the results of the examination within two weeks after
21 the date the board receives the results from the testing service.
22 If it is foreseeable that the notice of the examination results
23 will be delayed for more than 90 days after the examination date,
24 the board shall notify each examinee of the reason for the delay
25 before the 90th day.

26 (b) If requested in writing by a person who fails a license
27 examination administered under this Act, the board shall furnish

1 the person with an analysis of the person's performance on the
2 examination.

3 Sec. 19A. CONFIDENTIALITY OF EXAMINATION RESULTS. (a)

4 Except as provided by Subsection (c) of this section, a licensed
5 polygraph examiner, licensed trainee, or employee of a licensed
6 polygraph examiner may not disclose to another person information
7 acquired from a polygraph examination.

8 (b) Except as provided by Subsection (d) of this section, a
9 person for whom a polygraph examination is conducted or an employee
10 of the person may not disclose to another person information
11 acquired from the examination.

12 (c) A licensed polygraph examiner, licensed trainee, or
13 employee of a licensed polygraph examiner may disclose information
14 acquired from a polygraph examination to:

15 (1) the examinee or any other person specifically designated
16 in writing by the examinee;

17 (2) the person, firm, corporation, partnership, business
18 entity, or governmental agency that requested the examination;

19 (3) members or their agents of governmental agencies such as
20 federal, state, county, or municipal agencies that license,
21 supervise, or control the activities of polygraph examiners;

22 (4) other polygraph examiners in private consultation, all
23 of whom will adhere to this section; or

24 (5) others as may be required by due process of law.

25 (d) A person for whom a polygraph examination is conducted
26 or an employee of the person may disclose information acquired from
27 the examination to a person described by Subdivisions (1) through

1 (5) of Subsection (c) of this section.

2 (e) The board or any other governmental agency that acquires
3 information from a polygraph examination under Subdivision (3) of
4 Subsection (c) of this section shall keep the information
5 confidential.

6 Sec. 19B. INFORMATION ABOUT COMPLAINTS. (a) The board
7 shall keep an information file about each complaint filed with the
8 board relating to a licensee.

9 (b) If a written complaint is filed with the board relating
10 to a licensee, the board, at least as frequently as quarterly,
11 shall notify the complainant of the status of the complaint until
12 its final disposition unless the notification would jeopardize an
13 undercover investigation.

14 Sec. 24A. CONSUMER INFORMATION. (a) The board shall
15 prepare information of consumer interest describing the regulatory
16 functions of the board and the board's procedures by which consumer
17 complaints are filed with and resolved by the board. The board
18 shall make the information available to the general public and
19 appropriate state agencies.

20 (b) Each written contract for the services in this state of
21 a licensed polygraph examiner and each waiver of liability that is
22 signed by the subject of a polygraph examination shall contain the
23 name, mailing address, and telephone number of the board.

24 SECTION 5. A rule adopted by the Polygraph Examiners Board
25 before September 1, 1981, that conflicts with the Polygraph
26 Examiners Act (Article 4413(29cc), Vernon's Texas Civil Statutes),
27 as amended by this Act, is void. Within 90 days after September 1,

1 1981, the board shall repeal the rule.

2 SECTION 6. (a) A person holding office as a member of the
3 Polygraph Examiners Board on the effective date of this Act
4 continues to hold the office for the term for which the member was
5 originally appointed.

6 (b) The governor shall appoint two public members to fill
7 the offices of the incumbent members who are not polygraph
8 examiners in the commercial field and whose terms expire June 18,
9 1983, and June 18, 1985.

10 SECTION 7. This Act takes effect September 1, 1981.

11 SECTION 8. The importance of this legislation and the
12 crowded condition of the calendars in both houses create an
13 emergency and an imperative public necessity that the
14 constitutional rule requiring bills to be read on three several
15 days in each house be suspended, and this rule is hereby suspended.

The Honorable Bill Clayton
Speaker of the House of Representatives

May 19, 1981
(date)

We, your COMMITTEE ON GOVERNMENT ORGANIZATION, to whom was referred 513 941, have had the same under consideration and beg to report back with the recommendation that it (measure)

- A fiscal note was requested. (☒) yes (☐) no

An author's fiscal statement was requested. () yes (☒) no

An actuarial analysis was requested. () yes (☒) no

The Committee recommends that this measure be placed on the ~~(First)~~ or ~~(Second)~~ Calendar.

This measure (☒) **proposes new law.**
 (☒) **amends existing law.**

House Sponsor of Senate Measure Bock

The measure was reported from Committee by the following vote:

[illegible]

7 aye

0 day

1 present, not voting

3 absent

CHAIRMAN

COMMITTEE COORDINATOR

BILL ANALYSIS

Background Information

Polygraph instruments have been used primarily in criminal investigations. But since World War II, polygraph examination use has increased significantly in industrial and commercial settings in the attempt to reduce loss due to employee theft. Recognizing the increasing use of the polygraph and some of the problems generally associated with polygraph examinations, such as invasion of privacy, validity of results, and qualification of examiners; the Fifty-ninth Legislature established the Board of Polygraph Examiners in 1965 to license polygraph examiners and regulate the profession. Legislation was enacted to protect the public from unqualified examiners and inadequate polygraph equipment. Following declaration by the Texas Supreme Court that the Act was unconstitutional due to insufficiency of caption, the Sixty-first Legislature reenacted the legislation in 1969 with modifications. The Act established the Board of Polygraph Examiners in the Law Enforcement Training Division of the Engineering Extension Service of Texas A&M University. The board consists of six licensed polygraph examiners appointed by the governor. They employ one part-time administrator. Collected fees support board operations. 10% of the gross revenue goes to A&M Engineering Extension Service for the accounting and fiscal services they perform.

Purpose

The proposed legislation amends the current statute of provide for structural and functional changes in the operation of the Board of Polygraph Examiners. The Board is maintained as a policy-making body, but the membership is modified to provide for the inclusion of two members from the general public. Sunset related recommendations are also included.

Section by Section Analysis

SECTION 1: Amends the Polygraph Examiners Act, Article 4413 (29cc) V.T.C.S.; Section 5 by amending (a), (b), and (c) and adding Subsections (f), (g), (h), (i), (j), and (k):

Sec. 5: Removes the Board of Polygraph Examiners from the Texas A&M Engineering Extension Service; board membership is modified to provide for a six-member board, two of which must be representatives of the general public; eligibility requirements for general public members are added while the qualification for licensed polygraph examiner members remain unchanged; appointments shall be non-discriminatory; the board shall contract with D.P.S. for administrative services; per diem will be determined by legislative appropriation, including transportation expenses; Sunset expiration date is updated to 1993; conflict of interest provisions are added; registered lobbyists may not serve on board or as general counsel; grounds for removal; protests board actions taken during a period when there exists grounds for board removal; subjects board to open meetings law and Administrative Procedure Act; permits development of optional continuing education program.

SECTION 2: Amends the Polygraph Examiners Act, Article 4413 (29cc) V.T.C.S. by amending Section 6 (a) and adding subsections (d) and (e):

Sec. 6: Prohibits the Board from promulgating rules which restrict advertising and competitive bidding except to prohibit deceptive practices; calls for auditing the financial transactions of the Department of Public Safety relating to administration of this Act; requires annual reports; permits legislative review of rulemaking authority.

SECTION 3: Amends the Polygraph Examiners Act, Article 4413 (29cc) V.T.C.S. by amending Sections 8,9,12,14,17,19,22,23, and 26.

Sec. 8: Age, citizenship and moral fitness requirements for licensure are deleted; the Board is authorized to designate the organization to perform accrediting functions with regard to degree requirements for licensure; directs the board to establish criteria to evaluate the investigative experience of applicants;

Sec. 9: This section is amended so that the section numbers conform with the proposed bill.

Sec. 12: The reciprocity provision has been modified to provide for the issuance of licenses to persons licensed in another state through endorsement.

Sec. 14: This section is amended to authorize the Board to establish reasonable and necessary fees within established ceilings, for the administration of the Act.

Sec. 17: Standard delinquent renewal periods and penalties are established.

Sec. 19: Sanctions which may be imposed for a violation of the Act by a licensee have been expanded to include the authority to issue reprimands and impose probations, in addition to revocation, suspension and/or refusal to issue licenses. Also the grounds for initiating action have been amended to include violations of the confidentiality provision contained in the proposed bill.

Sec. 22: Board hearing requirements outlined in the Act have been clarified by indicating that hearing procedures are governed by the Administrative Procedure and Texas Register Act.

Sec. 23: The method of judicial review of administrative actions has been modified to provide for appeal under the substantial evidence rule rather than by trial de novo.

Sec. 26: This section establishes a penalty for violations of Section 19A relating to the confidentiality of polygraph examination results. An offense under this section is a Class B misdemeanor.

SECTION 4: Amends the Polygraph Examiners Act Article 4413 (29cc) V.T.C.S. by adding Section 13A, 19A, 19B, and 24A:

Sec. 13A: When a licensing examination is administered under the Act, the Board is required to notify the examinee of the results within thirty days of the examination date. Where a national testing service is used, the board is required to notify the examinee within two weeks of the date the results were received. Upon written request, the board must furnish to a person who has failed the examination an analysis of that person's performance.

Sec. 19A: This section establishes confidentiality provisions with regard to polygraph examination results and prohibits the release of information acquired through a polygraph examination except as provided in subsections (c) and (d).

Sec. 19B: Information files about complaints are required to be maintained. Additionally, the board is directed to notify complainant of the status of the complaint, unless notification would jeopardize an undercover investigation.

Sec. 24A: The Board is required to prepare consumer information describing the functions and operations of the board. Also, all written contracts for polygraph services must contain the Board's address and telephone number.

SECTION 5: Repealer.

SECTION 6: Board member continuation clause; provides for appointment of two public members.

SECTION 7: Effective date: September 1, 1981.

SECTION 8: Emergency Clause.

Rulemaking Authority

Prohibits the Board from promulgating rules which restrict competitive bidding and advertising except to prohibit false, misleading, or deceptive practices. In addition Section 8 of Article 4413 (29cc) Vernon's is amended to allow the board to set rules establishing criteria to ensure an applicant complies with active investigative experience requirements.

Substantial Differences

The major differences between S.B. 441 and C.S.S.B. 441 include the provision that the Polygraph Board will contract with D.P.S. for administrative services; plus Sunset related issues including requiring compliance with open meeting and Administrative Procedure Act, development of optional continuing education, and require annual reports; non-discriminatory board appointments; permits legislative review of rulemaking authority; fees are to be set within established ceilings.

Summary of Committee Action

Public notice was posted in accordance with Rule 3.084 Rules of Procedure of the House of Representatives and a public hearing was held on Wednesday April 1, 1981.

The bill was referred to a subcommittee consisting of the following members: Representatives Reby Cary, Elton Bomer, Chip Staniswalis, Gary Thompson, and Rodney Tow. On Tuesday, April 28, 1981 the measure was reported to the full committee with a substitute.

On Thursday, May 14, 1981 the full committee voted to report S.B. 441 to the House with a substitute and the recommendation that it do pass by a record vote of seven ayes, no nays, and one present not voting.

The following persons testified in favor of S.B. 441: Michael Moore, representing Texas Retailers Association; Henry Canty, representing Texas Retailers Association; Wallace Rash, representing Smith Protective Services, Inc. The following persons testified in opposition to S.B. 441: Michael D. Kradz, representing himself; Woodrow W. "Pepper" Crowder, representing Texas Association of Stress Analysts.

LEGISLATIVE BUDGET BOARD

Austin, Texas

MAR 24 1981

FISCAL NOTE

March 24, 1981

Honorable Charles W. Evans, Chairman
Committee on Government Organization
House of Representatives
Austin, Texas

In Re: Senate Bill No. 441,
as engrossed
By: Doggett

Sir:

In response to your request pursuant to House Rules, Section 3.119, this office finds the fiscal implications of Senate Bill No. 441, as engrossed (relating to the administration and continuation of the Polygraph Examiners Board and to regulation of polygraph examiners, trainees, and their employees; relating to confidentiality of results of polygraph examinations) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The Polygraph Examiners Board is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Polygraph Examiners Board after September 1, 1981. The Polygraph Examiners Board will have the responsibility to carry out the provisions of this Act, except for certain administrative duties (accounting, payroll, etc.) which will be transferred to the Department of Public Safety from the Texas Engineering Extension Service.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 \$51,577; FY 1983 \$56,696), would be contingent, if approved, upon passage of SB 441 or similar legislation. These appropriations would provide for approximately 2 state employees and would be financed from the following increase in fees.

<u>Fees (Names)</u>	<u>Present Fees</u>	<u>New Fee Schedule</u>
Polygraph Examiner's License	\$60	\$150
License Renewal	25	100
Intern Application	25	75
Test Fees	-0-	50
Duplicate License	10	25

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation level for fiscal years 1982 and 1983, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, as engrossed, is anticipated.


Thomas M. Keel
Director

Source: Texas A&M System; Department of Public Safety;
LBB Staff: TK, JH, KS, PA

LEGISLATIVE BUDGET BOARD

Austin, Texas

MAY 18 1981

FISCAL NOTE

May 18, 1981

Honorable Charles W. Evans, Chairman
Committee on Government Organization
House of Representatives
Austin, Texas

In Re: Committee Substitute for
Senate Bill No. 441
By: Doggett

Sir:

In response to your request pursuant to House Rules, Section 3.119, this office finds the fiscal implications of Committee Substitute for Senate Bill No. 441 (relating to continuation of the Polygraph Examiners Board and regulation of the operators of devices that are intended to determine if a person is telling the truth and to disclosure of the information acquired from the devices) to be as follows:

The bill would make no appropriation but could provide the legal basis for a request for funds to implement the provisions of the bill.

The Polygraph Examiners Board is subject to the provisions of the Texas Sunset Act, and unless continued in existence by the Legislature, will be abolished effective September 1, 1981.

The bill, should it be enacted, would continue the existence of the Polygraph Examiners Board after September 1, 1981. The Polygraph Examiners Board will have the responsibility to carry out the provisions of this Act. Certain administrative duties (accounting, payroll, etc.) will be performed through interagency contract with the Department of Public Safety.

The amount set forth for this agency in the General Appropriations Bill, as introduced (FY 1982 \$51,577; FY 1983 \$56,696), would be contingent, if approved, upon passage of SB 441 or similar legislation. These appropriations would provide for approximately 2 state employees and would be financed from the following increase in fees.

<u>Fees (Names)</u>	<u>Present Fees</u>	<u>New Fee Limits</u>
Polygraph Examiner's License	\$60	\$225
License Renewal	25	210
Internship License	30	115
Test Fees	20	75
Duplicate License	10	40
Extension of Intership License	25	40

The financial implications of the bill in future years may reasonably be expected to approximate the recommended appropriation level for fiscal years 1982 and 1983, but would in fact depend upon future decisions of the Texas Legislature.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.


Thomas M. Keel
Director

Source: Texas A&M System, Department of Public Safety; LBB Staff: TK, JH, KS, PA

ADOPTED

MAY 23 1981

Betty Murray
Chief Clerk
House of Representatives

By Doggett

S.B. No. 441

Substitute the following for S.B. No. 441:

By EVANS

C.S.S.B. No. 441

relating to the administration and continuation of the Polygraph
Examiners Board and to regulation of polygraph examiners, trainees,
and their employees; relating to confidentiality of results of
polygraph examinations; relating to certain information; providing
penalties; amending the Polygraph Examiners Act, as amended Board and
(Article 4413(29cc), Vernon's Texas Civil Statutes), by amending intended to
Sections 5, 6, 8, 9, 12, 14, 17, 19, 22, 23, and 26 and by adding ure of the
Sections 13A, 19A, 19B, and 24A. om the devices; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5, Polygraph Examiners Act, ^{as amended} (Article
4413(29cc), Vernon's Texas Civil Statutes), is amended by amending
Subsections (a), (b), and (e) and by adding Subsections (f), (g),
(h), (i), (j), and (k) to read as follows:

“(a) There is hereby established [~~in--the--Engineering~~
~~Extension-Service--Police-Training-Division--Texas-A-&-M-University~~
~~System--~~] a Polygraph Examiners Board consisting of six members who
shall be citizens of the United States and residents of the state
for at least two years prior to appointment. Four members [~~--all--of~~
~~whom~~] shall each have been engaged for a period of five consecutive
years as a polygraph examiner prior to appointment to the board,
and at the time of appointment as an active polygraph examiner.
Two members must be representatives of the general public. A
person is eligible for appointment as a public member if the person
and the person's spouse are not licensed by an occupational
regulatory agency in the field of polygraph examining, are not
employed by and do not participate in the management of an agency
or business entity related to the field of polygraph examining, and

House Substitute

5/27/81

do not have, other than as consumers, a financial interest in a business entity related to the field of polygraph examining. No two board members may be employed by the same person or agency. Two of the [At-least-two] members who are polygraph examiners must be qualified examiners of a governmental law enforcement agency, one of which shall be the supervisor of the polygraph section of the Department of Public Safety, and [at-least] two of the members who are polygraph examiners must be qualified polygraph examiners in the commercial field. The members shall be appointed by the Governor of the State of Texas with the advice and consent of the Senate for a term of six years. [The-terms-of--office--of--members appointed--to-the-initial-board-are-two-for-two-years,-two-for-four years,-and-two-for-six-years-] Any vacancy in an unexpired term shall be filled by appointment of the Governor with the advice and consent of the Senate for the unexpired term. Appointments shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

((b) The board shall contract with the Department of Public Safety for the administrative functions of the board including the collection of all fees and money due and the payment of all expenses, including travel expenses of board members.

Each member of the Board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging other than transportation expenses.

[The-number-of--employees of the board shall be determined by the Governor with the advice and consent of the Senate.]
and-the-salaries-of-each,-including-travel-and-expense-allowance-
A member is entitled to compensation for transportation expenses as prescribed by the general appropriations act.

1 the--members--of--the--Board--shall--be--as--fixed--in--the--General
2 Appropriation-Bill:] //

3 "(e) The Polygraph Examiners Board is subject to the Texas
4 Sunset Act, as amended (Article 5429k, Vernon's Texas Civil
5 Statutes); and unless continued in existence as provided by that
6 Act the board is abolished, and this Act expires effective
7 September 1, 1993 [1981].

8 "(f) A member or employee of the board may not be an officer,
9 employee, or paid consultant of a trade association in the
10 polygraph examining field. A member or employee of the board may
11 not be related within the second degree by affinity or
12 consanguinity to a person who is an officer, employee, or paid
13 consultant of a trade association in the regulated industry.

14 "(g) A person who is required to register as a lobbyist under
15 Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973,
16 as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may
17 not serve as a member of the board or act as the general counsel to
18 the board.

19 "(h) It is a ground for removal from the board if a member:

20 "(1) does not have at the time of appointment the
21 qualifications required by Subsection (a) of this section for
22 appointment to the board;

23 "(2) does not maintain during his service on the board the
24 qualifications required by Subsection (a) of this section for
25 appointment to the board;

26 "(3) violates a prohibition prescribed by Subsection (f) or
27 (g) of this section; or

1 “(4) fails to attend at least half of the regularly scheduled
 2 board meetings held in a calendar year, excluding meetings held
 3 while the person was not a board member.

4 “(i) If a ground for removal of a member from the board
 5 exists, the board's actions taken during the existence of the
 6 ground for removal are not invalid for that reason.

7 “(j) The board is subject to the open meetings law, Chapter
 8 271, Acts of the 60th Legislature, Regular Session, 1967, as
 9 amended (Article 6252-17, Vernon's Texas Civil Statutes), and the
 10 Administrative Procedure and Texas Register Act, as amended
 11 (Article 6252-13a, Vernon's Texas Civil Statutes).

12 “(k) The board may recognize, prepare, or implement
 13 continuing education programs for polygraph examiners and trainees.
 14 Participation in the programs is voluntary. ✓

15 SECTION 2. Section 6, Polygraph Examiners Act, ^{as amended} (Article
 16 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending
 17 Subsection (a) and by adding Subsections (d), ^{and (e)} and (e), ^{and (f)} to read as
 18 follows:

19 “(a) The board shall issue regulations consistent with the
 20 provisions of this Act for the administration and enforcement of
 21 this Act and shall prescribe forms which shall be issued in
 22 connection therewith. The board may not adopt rules restricting
 23 competitive bidding or advertising by a licensee of the board
 24 except to prohibit false, misleading, or deceptive practices by the
 25 licensee. The board may not include in its rules to prohibit
 26 false, misleading, or deceptive practices by a licensee a rule
 27 that:

((1) restricts the licensee's use of any medium for advertising;

((2) restricts the licensee's personal appearance or use of his voice in an advertisement;

((3) relates to the size or duration of an advertisement by the licensee; or

((4) restricts the licensee's advertisement under a trade name. /

((d) During each fiscal biennium, the state auditor shall audit the financial transactions of the Department of Public Safety that relate to the administration of this Act.

((e) On or before January 1 of each year, the Department of Public Safety shall make in writing to the governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the department under this Act during the preceding year.

((f) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as ^{added} amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the board statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the board receives the committee's statements. 6/10

SECTION 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to read as follows:

Sec^{tion} 8. EXAMINER'S LICENSE QUALIFICATIONS. (a) A person is qualified to receive a license as an examiner

((1) [who-is-at-least-21-years-of-age,-and

((2)--who-is-a-citizen-of-the-United-States,-and

((3)--who--establishes--that--he--is--a--person--of--honesty, truthfulness,-integrity,-and-moral-fitness,-and

((4)] who has not been convicted of a felony or a misdemeanor involving moral turpitude; and

1 \ (2) [(5)] who holds a baccalaureate degree from a college or
 2 university accredited by an organization that the board designates
 3 and that the board determines has accreditation standards to ensure
 4 a high level of scholarship for students [the-American--Asseiation
 5 of--Collegiate--Registrars--and--Admissions--Officers], or in lieu
 6 thereof, has five consecutive years of active investigative
 7 experience immediately preceding his application; and

8 \ (3) [(6)] who is a graduate of a polygraph examiners course
 9 approved by the board and has satisfactorily completed not less
 10 than six months of internship training, provided that if the
 11 applicant is not a graduate of an approved polygraph examiners
 12 course, satisfactory completion of not less than 12 months of
 13 internship training may satisfy this subdivision; and

14 \ (4) [(7)] who has passed an examination conducted by the
 15 board, or under its supervision, to determine his competency to
 16 obtain a license to practice as an examiner.

17 \ (b) [(8)] Prior to the issuance of a license, the applicant
 18 must furnish to the board evidence of a surety bond or insurance
 19 policy. Said surety bond or insurance policy shall be in the sum
 20 of \$5,000.00 and shall be conditioned that the obligor therein will
 21 pay to the extent of the face amount of such surety bond or
 22 insurance policy all judgments which may be recovered against the
 23 licensee by reason of any wrongful or illegal acts committed by him
 24 in the course of his examinations.

25 \ (c) The board by rule shall establish the criteria by which
 26 it determines whether an applicant complies with the active
 27 investigative experience requirement established by Subdivision (2)

1 of Subsection (a) of this section.

2 " ⁹Sec. 9. ACQUISITION OF LICENSE BY PRESENT EXAMINERS. On the
3 effective date of this Act, any person who held a license issued by
4 the board [Board] established or attempted to be established by
5 Chapter 441, Acts of the 59th Legislature, Regular Session, 1965
6 [Acts,--1965,--59th-Leg.,--R. S.,--Ch. 441,--p. 888], and whose license
7 was in effect on the date on which said Act was held invalid, shall
8 be automatically licensed hereunder until such date as his license
9 under the Act aforesaid has expired and thereafter may renew his
10 license on payment of the fee herein provided. The applicant must
11 also satisfy the provisions of Subsection (b) of Section 8 [(8)] of
12 this Act. ")

13 " ¹⁰Sec. 12. APPLICANT WITH OUT-OF-STATE LICENSE. The board may
14 waive any license requirement for an applicant with a valid license
15 from another state having license requirements substantially
16 equivalent to those of this state. [~~An--applicant--who--is--a~~
17 ~~polygraph--examiner--licensed--under--the--laws--of--another--state--or~~
18 ~~territory--of--the--United--States--may--be--issued--a--license--without~~
19 ~~examination--by--the--board,--in--its--discretion,--upon--payment--of--a--fee~~
20 ~~of--\$60--and--the--production--of--satisfactory--proof--that~~

21 " [(1)--he-is-at-least-21-years-of-age,--and

22 " [(2)--he-is-a-citizen-of-the-United-States,--and

23 " [(3)--he-is-of-good-moral-character,--and

24 " [(4)--the--requirements--for--the--licensing--of--polygraph
25 examiner-in-such-particular-state-or-territory-of-the-United-States
26 were-at-the-date-of-the-applicant's-licensing-therein-substantially
27 equivalent-to-the-requirements-now-in-force-in-this-state,--and

1 \ [(5) -- the --- applicant --- had --- lawfully --- engaged --- in --- the
 2 administration of polygraph examinations under the laws of such
 3 state or territory for at least two years prior to his application
 4 for license hereunder; and

5 \ [(6) -- such other --- state --- or --- territory --- grants --- similar
 6 reciprocity to license holders of this state; and

7 \ [(7) -- he has complied with Section 11 of this Act.] //

8 "Sect^{ion} 14. [EXAMINATION--AND--LICENSE] FEES. (a) The board
 9 shall establish reasonable and necessary fees for the
 10 administration of this Act, in amounts not to exceed:

11	" 1. Polygraph examiner's license	\$ 225
12	1 2. Internship license	115
13	1 3. Duplicate license	40
14	1 4. Renewal fee for examiner's license	210
15	1 5. Extension or renewal of an internship license	40
16	1 6. Examination fee	75

17 [The fee to be paid by an applicant for an
 18 examination to determine his fitness to receive a polygraph
 19 examiner's license is \$20, which is not to be credited as payment
 20 against the license fee.]

21 \ (b) [The fee to be paid for an original polygraph examiner's
 22 license is \$60.]

23 \ [(c) -- The fee to be paid for an internship license is \$30.

24 \ [(d) -- The fee to be paid for the issuance of a duplicate
 25 polygraph examiner's license is \$10.

26 \ [(e) -- The fee to be paid for a polygraph examiner's renewal
 27 license is \$25.

1 \ [{f}] --The--fee--to-be-paid-for-the-extension-or-renewal-of-an
2 internship-license-is-\$25-

3 \ [{g}] --The-fee-to-be-paid-for-a-duplicate--internship--license
4 is-\$10-

5 \ [{h}] The fees required by this Act may be paid by the
6 governmental agency employing the examiner. //

7 \ Sec¹⁷ 17. TERMINATION AND RENEWAL OF EXAMINER'S LICENSE. (a)
8 Each polygraph examiner's license shall be issued for the term of
9 one year and shall, unless suspended or revoked, be renewed
10 annually.

11 \ (b) A person may renew his unexpired license by paying to
12 the board before the expiration date of the license the required
13 renewal fee.

14 \ (c) If a person's license has been expired for not more than
15 90 days, the person may renew the license by paying to the board
16 the required renewal fee and a fee that is one-half of the
17 examination fee for the license.

18 \ (d) If a person's license has been expired for more than 90
19 days but less than two years, the person may renew the license by
20 paying to the board all unpaid renewal fees and a fee that is equal
21 to the examination fee for the license.

22 \ (e) If a person's license has been expired for two years or
23 more, the person may not renew the license. The person may obtain
24 a new license by submitting to reexamination and complying with the
25 requirements and procedures for obtaining an original license.

26 \ (f) A [as-prescribed-by-the--board:---A--polygraph--examiner
27 whose--license--has--expired-may-at-any-time-within-two-years-after

the-expiration-whereof-obtain-a-renewal-license-without-examination
 by-making-a-renewal-application--therefor--and--satisfying--Section
 8(2)--(3)--and-(4)--However,--any] polygraph examiner whose license
 expired while he was in the federal service on active duty with the
 armed forces of the United States, or the national guard called
 into service or training, or in training or education under the
 supervision of the United States preliminary to induction into the
 military service, may have his license renewed without examination
 if within two years after termination of such service, training, or
 education except under condition other than honorable, he pays to
the board the required renewal fee and furnishes the board with an
 affidavit to the effect that he has been so engaged and that his
 service, training, or education has been so terminated. [Section
 8(2)--(3)--and-(4)--of-this-Act-must-also-be-satisfied.] "

" Sec¹⁹ 19. REFUSAL, PROBATION, REPRIMAND, SUSPENSION,
 REVOCATION--GROUNDS. The board shall [may] refuse to issue a
license, shall revoke or suspend a license, shall reprimand a
licensee, or may probate a license suspension [or--may--suspend--or
~~revoke-a-license~~] on any one or more of the following grounds:

"(1) for failing to inform a subject to be examined as to the
 nature of the examination;

"(2) for failing to inform a subject to be examined that his
 participation in the examination is voluntary;

"(3) material misstatement in the application for original
 license or in the application for any renewal license under this
 Act;

"(4) wilful disregard or violation of this Act or of any

1 regulation or rule issued pursuant thereto, including, but not
2 limited to, wilfully making a false report concerning an
3 examination for polygraph examination purposes;

4 "(5) if the holder of any license has been adjudged guilty of
5 the commission of a felony or a misdemeanor involving moral
6 turpitude;

7 "(6) making any wilful misrepresentation or false promises or
8 causing to be printed any false or misleading advertisement for the
9 purpose of directly or indirectly obtaining business or trainees;

10 "(7) having demonstrated unworthiness or incompetency to act
11 as a polygraph examiner as defined by this Act;

12 "(8) allowing one's license under this Act to be used by any
13 unlicensed person in violation of the provisions of this Act;

14 "(9) wilfully aiding or abetting another in the violation of
15 this Act or any regulation or rule issued pursuant thereto;

16 "(10) where the license holder has been adjudged as a
17 habitual drunkard or mentally incompetent as provided in the
18 Probate Code;

19 "(11) failing, within a reasonable time, to provide
20 information requested by the secretary as the result of a formal
21 complaint to the board which would indicate a violation of this
22 Act; [or]

23 "(12) failing to inform the subject of the results of the
24 examination if so requested; or

25 "(13) violating Subsection (a) of Section 19A of this Act
26 relating to the confidentiality of information acquired from an
27 examination."

1 ~~Used 4.07~~ 22. BOARD HEARING. (a) If the board proposes to
 2 refuse a person's application for a license or to suspend or revoke
 3 a person's license, the person is entitled to a hearing before the
 4 board. [~~When there is cause to refuse an application or to suspend~~
 5 ~~or revoke the license of any polygraph examiner, the board shall,~~
 6 ~~not less than 30 days before refusal, suspension, or revocation~~
 7 ~~action is taken, notify such person in writing, in person or by~~
 8 ~~certified mail at the last address supplied to the board by such~~
 9 ~~person, of such impending refusal, suspension, or revocation, the~~
 10 ~~reasons therefor, and of his right to an administrative hearing for~~
 11 ~~the purpose of determining whether or not the evidence is~~
 12 ~~sufficient to warrant the refusal, suspension, or revocation action~~
 13 ~~proposed to be taken by the board. If, within 20 days after the~~
 14 ~~personal service of such notice or such notice has been deposited~~
 15 ~~in the United States mail, such person has not made a written~~
 16 ~~request to the board for this administrative hearing, the board is~~
 17 ~~authorized to suspend or revoke the polygraph examiner's license of~~
 18 ~~such person without a hearing. Upon receipt by the board of such~~
 19 ~~written request of such person within the 20-day period as set out~~
 20 ~~above, an opportunity for an administrative hearing shall be~~
 21 ~~afforded as early as is practicable. In no case shall the hearing~~
 22 ~~be held less than 10 days after written notification thereof,~~
 23 ~~including a copy of the charges, shall have been given the person~~
 24 ~~by personal service or by certified mail sent to the last address~~
 25 ~~supplied to the board by the applicant or licensee. The~~
 26 ~~administrative hearing in such cases shall be before the board.]~~

27 (b) Proceedings for the refusal, suspension, or revocation

1 of a license are governed by the Administrative Procedure and Texas
 2 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
 3 Statutes). [~~The board shall conduct the administrative hearings~~
 4 ~~and it is authorized to administer oaths and issue subpoenas for~~
 5 ~~the attendance of witnesses and the production of relevant books,~~
 6 ~~papers, documents, etc. On the basis of the evidence submitted at~~
 7 ~~the hearing, the board shall take whatever action it deems~~
 8 ~~necessary in refusing the application or suspending or revoking the~~
 9 ~~license.]~~

10 "Sec^{ion} 23. JUDICIAL REVIEW. Any person dissatisfied with the
 11 action of the board in refusing his application or suspending or
 12 revoking his license, or any other action of the board, may appeal
 13 the action of the board by filing a petition within the appropriate
 14 time [~~30 days thereafter~~] in the district court in the county where
 15 the person resides or in the district court of Travis County,
 16 Texas. An appeal of an action of the board is governed by the
 17 Administrative Procedure and Texas Register Act, as amended
 18 (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review
 19 of an action of the board shall be conducted under the substantial
 20 evidence rule. [~~In all appeals prosecuted in any of the courts of~~
 21 ~~this state pursuant to the provisions of this Act, such trials~~
 22 ~~shall be de novo as that term is used and understood in appeals~~
 23 ~~from justice of the peace courts to county courts. When such an~~
 24 ~~appeal is filed and the court thereby acquires jurisdiction, all~~
 25 ~~administrative or executive action taken prior thereto shall be~~
 26 ~~null and void and of no force and effect, and the rights of the~~
 27 ~~parties thereto shall be determined by the court upon a trial of~~

1 the-matters-in-controversy-under-rules-governing-the-trial-of-other
2 civil-suits-in-the-same-manner-and-to-the-same-extent-as-though-the
3 matter-had-been-committed-to-the-courts-in-the-first--instance--and
4 there-had-been-no-intervening-administrative-or-executive-action-or
5 decision:---Under--no--circumstances-shall-the-substantial-evidence
6 rule-as-interpreted-and-applied-by-the-courts--of--Texas--in--other
7 cases--ever--be--used--or--applied--to-appeals-prosecuted-under-the
8 provisions--of--this--Act:---The--Legislature--hereby--specifically
9 declares-that-the-provisions-of-this-section-shall-not-be-severable
10 from--the--balance--of--this-Act,-and-further-specifically-declares
11 that-this-Act-would-not-have-been-passed-without-the--inclusion--of
12 this--section:---If--this--section,-or-any-part-thereof,-is-for-any
13 reason-ever-held-by-any-court-to-be--invalid,-unconstitutional--or
14 inoperative--in--any--way,-such-holding-shall-apply-to-this-entire
15 Act,-and-in-such-event-this-entire-Act-shall-be-null,-void--and--of
16 no-force-and-effect.] "X

17 "Section 26. PENALTIES. (a) Any person who violates any
18 provision of this Act or any person who falsely states or
19 represents that he has been or is a polygraph examiner or trainee
20 or that he is qualified to apply instrumentation to the detection
21 of deception or verification of truth of statements shall be guilty
22 of a misdemeanor and upon conviction thereof shall be punished by a
23 fine of not less than \$100 nor more than \$1,000 or by imprisonment
24 in the county jail for a term of not to exceed six months, or both.

25 (b) A person commits an offense if the person intentionally,
26 knowingly, recklessly, or with criminal negligence violates Section
27 19A of this Act relating to the confidentiality of information

1 acquired from a polygraph examination. An offense under this
2 subsection is a Class B misdemeanor.

3 SECTION 4. The Polygraph Examiners Act, as amended (Article
4 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding
5 Sections 13A, 19A, 19B, and 24A to read as follows:

6 "Sec^{13A} 13A. NOTICE AND ANALYSIS OF EXAMINATION RESULTS. (a)
7 Within 30 days after the date a license examination is administered
8 under this Act, the board shall notify each examinee of the results
9 of the examination. However, if an examination is graded or
10 reviewed by a national testing service, the board shall notify each
11 examinee of the results of the examination within two weeks after
12 the date the board receives the results from the testing service.
13 If it is foreseeable that the notice of the examination results
14 will be delayed for more than 90 days after the examination date,
15 the board shall notify each examinee of the reason for the delay
16 before the 90th day.

17 "(b) If requested in writing by a person who fails a license
18 examination administered under this Act, the board shall furnish
19 the person with an analysis of the person's performance on the
20 examination."

21 "Sec^{19A} 19A. CONFIDENTIALITY OF EXAMINATION RESULTS. (a)
22 Except as provided by Subsection (c) of this section, a licensed
23 polygraph examiner, licensed trainee, or employee of a licensed
24 polygraph examiner may not disclose to another person information
25 acquired from a polygraph examination.

26 "(b) Except as provided by Subsection (d) of this section, a
27 person for whom a polygraph examination is conducted or an employee

1 of the person may not disclose to another person information
2 acquired from the examination.

3 "(c) A licensed polygraph examiner, licensed trainee, or
4 employee of a licensed polygraph examiner may disclose information
5 acquired from a polygraph examination to:

6 "(1) the examinee or any other person specifically designated
7 in writing by the examinee;

8 "(2) the person, firm, corporation, partnership, business
9 entity, or governmental agency that requested the examination;

10 "(3) members or their agents of governmental agencies such as
11 federal, state, county, or municipal agencies that license,
12 supervise, or control the activities of polygraph examiners;

13 "(4) other polygraph examiners in private consultation, all
14 of whom will adhere to this section; or

15 "(5) others as may be required by due process of law.

16 "(d) A person for whom a polygraph examination is conducted,
17 or an employee of the person may disclose information acquired from
18 the examination to a person described by Subdivisions (1) through
19 (5) of Subsection (c) of this section.

20 "(e) The board or any other governmental agency that acquires
21 information from a polygraph examination under Subdivision (3) of
22 Subsection (c) of this section shall keep the information
23 confidential.

24 "Sec^{19B} 19B. INFORMATION ABOUT COMPLAINTS. (a) The board
25 shall keep an information file about each complaint filed with the
26 board relating to a licensee.

27 "(b) If a written complaint is filed with the board relating

1 to a licensee, the board, at least as frequently as quarterly,
2 shall notify the complainant of the status of the complaint until
3 its final disposition unless the notification would jeopardize an
4 undercover investigation. "

5 Sec^{ion} 24A. CONSUMER INFORMATION. (a) The board shall
6 prepare information of consumer interest describing the regulatory
7 functions of the board and the board's procedures by which consumer
8 complaints are filed with and resolved by the board. The board
9 shall make the information available to the general public and
10 appropriate state agencies.

11 (b) Each written contract for the services in this state of
12 a licensed polygraph examiner and each waiver of liability that is
13 signed by the subject of a polygraph examination shall contain the
14 name, mailing address, and telephone number of the board. "

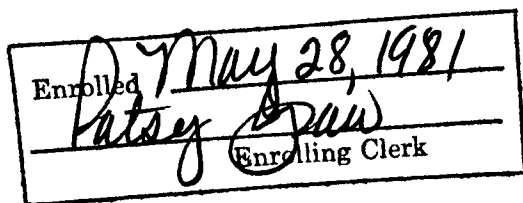
15 SECTION 5. A rule adopted by the Polygraph Examiners Board
16 before September 1, 1981, that conflicts with the Polygraph
17 Examiners Act ^{as amended} (Article 4413(29cc), Vernon's Texas Civil Statutes),
18 as amended by this Act, is void. Within 90 days after September 1,
19 1981, the board shall repeal the rule.

20 SECTION 6. (a) A person holding office as a member of the
21 Polygraph Examiners Board on the effective date of this Act
22 continues to hold the office for the term for which the member was
23 originally appointed.

24 (b) The governor shall appoint two public members to fill
25 the offices of the incumbent members who are not polygraph
26 examiners in the commercial field and whose terms expire June 18,
27 1983, and June 18, 1985.

1 SECTION 7. This Act takes effect September 1, 1981.

2 SECTION 8. The importance of this legislation and the
3 crowded condition of the calendars in both houses create an
4 emergency and an imperative public necessity that the
5 constitutional rule requiring bills to be read on three several
6 days in each house be suspended, and this rule is hereby suspended.



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AN ACT

relating to the administration and continuation of the Polygraph Examiners Board and to regulation of polygraph examiners, trainees, and their employees; relating to confidentiality of results of polygraph examinations; relating to certain information; providing penalties; amending the Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), by amending Sections 5, 6, 8, 9, 12, 14, 17, 19, 22, 23, and 26 and by adding Sections 13A, 19A, 19B, and 24A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (e) and by adding Subsections (f), (g), (h), (i), (j), and (k) to read as follows:

"(a) There is hereby established [~~in--the--Engineering Extension-Service,-Police-Training-Division,-Texas-A-&-M-University System,~~] a Polygraph Examiners Board consisting of six members who shall be citizens of the United States and residents of the state for at least two years prior to appointment. Four members[~~-all-of whom~~] shall each have been engaged for a period of five consecutive years as a polygraph examiner prior to appointment to the board, and at the time of appointment as an active polygraph examiner. Two members must be representatives of the general public. A person is eligible for appointment as a public member if the person and the person's spouse are not licensed by an occupational regulatory agency in the field of polygraph examining, are not

1 employed by and do not participate in the management of an agency
2 or business entity related to the field of polygraph examining, and
3 do not have, other than as consumers, a financial interest in a
4 business entity related to the field of polygraph examining. No
5 two board members may be employed by the same person or agency.
6 Two of the [~~At-least-two~~] members who are polygraph examiners must
7 be qualified examiners of a governmental law enforcement agency,
8 one of which shall be the supervisor of the polygraph section of
9 the Department of Public Safety, and [~~at-least~~] two of the members
10 who are polygraph examiners must be qualified polygraph examiners
11 in the commercial field. The members shall be appointed by the
12 Governor of the State of Texas with the advice and consent of the
13 Senate for a term of six years. [~~The-terms-of--office--of--members~~
14 ~~appointed--to-the-initial-board-are-two-for-two-years,-two-for-four~~
15 ~~years,-and-two-for-six-years.-~~] Any vacancy in an unexpired term
16 shall be filled by appointment of the Governor with the advice and
17 consent of the Senate for the unexpired term. Appointments shall
18 be made without regard to the race, creed, sex, religion, or
19 national origin of the appointees.

20 "(b) The board shall contract with the Department of Public
21 Safety for the administrative functions of the board including the
22 collection of all fees and money due and the payment of all
23 expenses, including travel expenses of board members. Each member
24 of the board is entitled to a per diem as set by legislative
25 appropriation for each day that the member engages in the business
26 of the board. A member may not receive any compensation for travel
27 expenses, including expenses for meals and lodging other than

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1 transportation expenses. A member is entitled to compensation for
2 transportation expenses as prescribed by the General Appropriations
3 Act. [~~The number of employees and the salaries of each, including~~
4 ~~travel and expense allowance of the members of the Board shall be~~
5 ~~as fixed in the General Appropriation Bill.~~]"

6 "(e) The Polygraph Examiners Board is subject to the Texas
7 Sunset Act, as amended (Article 5429k, Vernon's Texas Civil
8 Statutes); and unless continued in existence as provided by that
9 Act the board is abolished, and this Act expires effective
10 September 1, 1993 [~~1981~~].

11 "(f) A member or employee of the board may not be an
12 officer, employee, or paid consultant of a trade association in the
13 polygraph examining field. A member or employee of the board may
14 not be related within the second degree by affinity or
15 consanguinity to a person who is an officer, employee, or paid
16 consultant of a trade association in the regulated industry.

17 "(g) A person who is required to register as a lobbyist
18 under Chapter 422, Acts of the 63rd Legislature, Regular Session,
19 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes),
20 may not serve as a member of the board or act as the general
21 counsel to the board.

22 "(h) It is a ground for removal from the board if a member:

23 "(1) does not have at the time of appointment the
24 qualifications required by Subsection (a) of this section for
25 appointment to the board;

26 "(2) does not maintain during his service on the board the
27 qualifications required by Subsection (a) of this section for

1 appointment to the board;

2 "(3) violates a prohibition prescribed by Subsection (f) or
3 (g) of this section; or

4 "(4) fails to attend at least half of the regularly
5 scheduled board meetings held in a calendar year, excluding
6 meetings held while the person was not a board member.

7 "(i) If a ground for removal of a member from the board
8 exists, the board's actions taken during the existence of the
9 ground for removal are not invalid for that reason.

10 "(j) The board is subject to the open meetings law, Chapter
11 271, Acts of the 60th Legislature, Regular Session, 1967, as
12 amended (Article 6252-17, Vernon's Texas Civil Statutes), and the
13 Administrative Procedure and Texas Register Act, as amended
14 (Article 6252-13a, Vernon's Texas Civil Statutes).

15 "(k) The board may recognize, prepare, or implement
16 continuing education programs for polygraph examiners and trainees.
17 Participation in the programs is voluntary."

18 SECTION 2. Section 6, Polygraph Examiners Act, as amended
19 (Article 4413(29cc), Vernon's Texas Civil Statutes), is amended by
20 amending Subsection (a) and by adding Subsections (d), (e), and (f)
21 to read as follows:

22 "(a) The board shall issue regulations consistent with the
23 provisions of this Act for the administration and enforcement of
24 this Act and shall prescribe forms which shall be issued in
25 connection therewith. The board may not adopt rules restricting
26 competitive bidding or advertising by a licensee of the board
27 except to prohibit false, misleading, or deceptive practices by the

1 licensee. The board may not include in its rules to prohibit
2 false, misleading, or deceptive practices by a licensee a rule
3 that:

4 "(1) restricts the licensee's use of any medium for
5 advertising;

6 "(2) restricts the licensee's personal appearance or use of
7 his voice in an advertisement;

8 "(3) relates to the size or duration of an advertisement by
9 the licensee; or

10 "(4) restricts the licensee's advertisement under a trade
11 name."

12 "(d) During each fiscal biennium, the state auditor shall
13 audit the financial transactions of the Department of Public Safety
14 that relate to the administration of this Act.

15 "(e) On or before January 1 of each year, the Department of
16 Public Safety shall make in writing to the governor and the
17 presiding officer of each house of the legislature a complete and
18 detailed report accounting for all funds received and disbursed by
19 the department under this Act during the preceding year.

20 "(f) If the appropriate standing committees of both houses
21 of the legislature acting under Subsection (g), Section 5,
22 Administrative Procedure and Texas Register Act, as added (Article
23 6252-13a, Vernon's Texas Civil Statutes), transmit to the board
24 statements opposing adoption of a rule under that section, the rule
25 may not take effect, or if the rule has already taken effect, the
26 rule is repealed effective on the date the board receives the
27 committees' statements."

SECTION 3. Sections 8, 9, 12, 14, 17, 19, 22, 23, and 26, Polygraph Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 8. EXAMINER'S LICENSE QUALIFICATIONS. (a) A person is qualified to receive a license as an examiner

"(1) [~~who is at least 21 years of age, and~~

"[~~(2) -- who is a citizen of the United States, and~~

"[~~(3) -- who establishes that he is a person of honesty, truthfulness, integrity, and moral fitness, and~~

"[~~(4)~~] who has not been convicted of a felony or a misdemeanor involving moral turpitude; and

"(2) [~~(5)~~] who holds a baccalaureate degree from a college or university accredited by an organization that the board designates and that the board determines has accreditation standards to ensure a high level of scholarship for students [~~the American Association of Collegiate Registrars and Admissions Officers~~], or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application; and

"(3) [~~(6)~~] who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than six months of internship training, provided that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than 12 months of internship training may satisfy this subdivision; and

"(4) [~~(7)~~] who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

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1 "(b) [~~8~~]" Prior to the issuance of a license, the applicant
2 must furnish to the board evidence of a surety bond or insurance
3 policy. Said surety bond or insurance policy shall be in the sum
4 of \$5,000.00 and shall be conditioned that the obligor therein will
5 pay to the extent of the face amount of such surety bond or
6 insurance policy all judgments which may be recovered against the
7 licensee by reason of any wrongful or illegal acts committed by him
8 in the course of his examinations.

9 "(c) The board by rule shall establish the criteria by which
10 it determines whether an applicant complies with the active
11 investigative experience requirement established by Subdivision (2)
12 of Subsection (a) of this section.

13 "Section 9. ACQUISITION OF LICENSE BY PRESENT EXAMINERS. On
14 the effective date of this Act, any person who held a license
15 issued by the board [~~Board~~] established or attempted to be
16 established by Chapter 441, Acts of the 59th Legislature, Regular
17 Session, 1965 [~~Acts,--1965,--59th-Leg,--R.S.--Ch.--441,--p.--888~~], and
18 whose license was in effect on the date on which said Act was held
19 invalid, shall be automatically licensed hereunder until such date
20 as his license under the Act aforesaid has expired and thereafter
21 may renew his license on payment of the fee herein provided. The
22 applicant must also satisfy the provisions of Subsection (b) of
23 Section 8 [~~8~~] of this Act."

24 "Section 12. APPLICANT WITH OUT-OF-STATE LICENSE. The board
25 may waive any license requirement for an applicant with a valid
26 license from another state having license requirements
27 substantially equivalent to those of this state. [~~An-applicant-who~~]

is-a-polygraph-examiner-licensed-under-the-laws-of-another-state-or
territory--of--the--United--States--may-be-issued-a-license-without
examination-by-the-board,-in-its-discretion,-upon-payment-of-a--fee
of-\$60-and-the-production-of-satisfactory-proof-that

"[(1)--he-is-at-least-21-years-of-age,-and

"[(2)--he-is-a-citizen-of-the-United-States,-and

"[(3)--he-is-of-good-moral-character,-and

"[(4)--the---requirements--for--the--licensing--of--polygraph
examiner-in-such-particular-state-or-territory-of-the-United-States
were-at-the-date-of-the-applicant's-licensing-therein-substantially
equivalent-to-the-requirements-now-in-force-in-this-state,-and

"[(5)--the---applicant---had---lawfully---engaged---in---the
administration--of--polygraph--examinations--under-the-laws-of-such
state-or-territory-for-at-least-two-years-prior-to-his--application
for-license-hereunder,-and

"[(6)--such---other---state---or---territory--grants--similar
reciprocity-to-license-holders-of-this-state,-and

"[(7)--he-has-complied-with-Section-11-of-this-Act.]"

"Section 14. [EXAMINATION-AND-LICENSE] FEES.. (a) The board
shall establish reasonable and necessary fees for the
administration of this Act in amounts not to exceed:

"1. Polygraph examiner's license	\$225
"2. Internship license	115
"3. Duplicate license	40
"4. Renewal fee for examiner's license	210
"5. Extension or renewal of an internship license	40
"6. Examination fee	75

[The-fee-to-be-paid-by-an-applicant-for-an-examination-to-determine his-fitness-to-receive-a-polygraph-examiner's-license-is-\$20,-which is-not-to-be-credited-as-payment-against-the-license-fee.]

"(b) [The--fee--to--be--paid--for--an---original---polygraph examiner's-license-is-\$60-

"[(e) --The--fee--to-be-paid-for-an-internship-license-is-\$30-

"[(d) --The-fee-to-be-paid-for-the--issuance--of--a--duplicate polygraph-examiner's-license-is-\$10-

"[(e) --The--fee-to-be-paid-for-a-polygraph-examiner's-renewal license-is-\$25-

"[(f) --The-fee-to-be-paid-for-the-extension-or-renewal-of--an internship-license-is-\$25-

"[(g) --The--fee-to-be-paid-for-a-duplicate-internship-license is-\$10-

"[(h)] The fees required by this Act may be paid by the governmental agency employing the examiner."

"Section 17. TERMINATION AND RENEWAL OF EXAMINER'S LICENSE.

(a) Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually.

"(b) A person may renew his unexpired license by paying to the board before the expiration date of the license the required renewal fee.

"(c) If a person's license has been expired for not more than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

"(d) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

"(e) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

"(f) A [as-prescribed-by-the-board---A--polygraph--examiner whose--license--has--expired--may-at-any-time-within-two-years-after the-expiration--thereof-obtain-a-renewal-license-without-examination by-making-a-renewal-application--therefor--and--satisfying--Section 8(2)--(3)--and--(4)--However,--any] polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the national guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if within two years after termination of such service, training, or education except under condition other than honorable, he pays to the board the required renewal fee and furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training, or education has been so terminated. [Section 8(2)--(3)--and--(4)--of--this--Act--must--also--be--satisfied.]"

"Section 19. REFUSAL, PROBATION, REPRIMAND, SUSPENSION, REVOCATION--GROUNDS. The board shall [may] refuse to issue a license, shall revoke or suspend a license, shall reprimand a

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1 licensee, or may probate a license suspension [~~er--may--suspend--or~~
2 ~~revoke-a-license~~] on any one or more of the following grounds:

3 "(1) for failing to inform a subject to be examined as to
4 the nature of the examination;

5 "(2) for failing to inform a subject to be examined that his
6 participation in the examination is voluntary;

7 "(3) material misstatement in the application for original
8 license or in the application for any renewal license under this
9 Act;

10 "(4) wilful disregard or violation of this Act or of any
11 regulation or rule issued pursuant thereto, including, but not
12 limited to, wilfully making a false report concerning an
13 examination for polygraph examination purposes;

14 "(5) if the holder of any license has been adjudged guilty
15 of the commission of a felony or a misdemeanor involving moral
16 turpitude;

17 "(6) making any wilful misrepresentation or false promises
18 or causing to be printed any false or misleading advertisement for
19 the purpose of directly or indirectly obtaining business or
20 trainees;

21 "(7) having demonstrated unworthiness or incompetency to act
22 as a polygraph examiner as defined by this Act;

23 "(8) allowing one's license under this Act to be used by any
24 unlicensed person in violation of the provisions of this Act;

25 "(9) wilfully aiding or abetting another in the violation of
26 this Act or any regulation or rule issued pursuant thereto;

27 "(10) where the license holder has been adjudged as a

1 habitual drunkard or mentally incompetent as provided in the
2 Probate Code;

3 "(11) failing, within a reasonable time, to provide
4 information requested by the secretary as the result of a formal
5 complaint to the board which would indicate a violation of this
6 Act; [or]

7 "(12) failing to inform the subject of the results of the
8 examination if so requested; or

9 "(13) violating Subsection (a) of Section 19A of this Act
10 relating to the confidentiality of information acquired from an
11 examination."

12 "Section 22. BOARD HEARING. (a) If the board proposes to
13 refuse a person's application for a license or to suspend or revoke
14 a person's license, the person is entitled to a hearing before the
15 board. [~~When there is cause to refuse an application or to suspend~~
16 ~~or revoke the license of any polygraph examiner, the board shall,~~
17 ~~not less than 30 days before refusal, suspension, or revocation~~
18 ~~action is taken, notify such person in writing, in person or by~~
19 ~~certified mail at the last address supplied to the board by such~~
20 ~~person, of such impending refusal, suspension, or revocation, the~~
21 ~~reasons therefor, and of his right to an administrative hearing for~~
22 ~~the purpose of determining whether or not the evidence is~~
23 ~~sufficient to warrant the refusal, suspension, or revocation action~~
24 ~~proposed to be taken by the board. If, within 20 days after the~~
25 ~~personal service of such notice or such notice has been deposited~~
26 ~~in the United States mail, such person has not made a written~~
27 ~~request to the board for this administrative hearing, the board is~~

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1 authorized-to-suspend-or-revoke-the-polygraph-examiner's-license-of
2 such-person-without-a-hearing. --Upon-receipt-by-the-board--of--such
3 written--request-of-such-person-within-the-20-day-period-as-set-out
4 above,--an--opportunity--for--an--administrative--hearing--shall--be
5 afforded--as-early-as-is-practicable. --In-no-case-shall-the-hearing
6 be-held-less-than--10--days--after--written--notification--thereof,
7 including--a--copy-of-the-charges,--shall-have-been-given-the-person
8 by-personal-service-or-by-certified-mail-sent-to-the--last--address
9 supplied---to---the---board--by--the--applicant--or--licensee. --The
10 administrative-hearing-in-such-cases-shall-be-before-the-board.]

11 "(b) Proceedings for the refusal, suspension, or revocation
12 of a license are governed by the Administrative Procedure and Texas
13 Register Act, as amended (Article 6252-13a, Vernon's Texas Civil
14 Statutes). [The-board-shall-conduct--the--administrative--hearings
15 and--it--is--authorized-to-administer-oaths-and-issue-subpoenas-for
16 the-attendance-of-witnesses-and-the-production-of--relevant--books,
17 papers,--documents,--etc. --On-the-basis-of-the-evidence-submitted-at
18 the--hearing,--the--board--shall--take--whatever--action--it--deems
19 necessary-in-refusing-the-application-or-suspending-or-revoking-the
20 license.]

21 "Section 23. JUDICIAL REVIEW. Any person dissatisfied with
22 the action of the board in refusing his application or suspending
23 or revoking his license, or any other action of the board, may
24 appeal the action of the board by filing a petition within the
25 appropriate time [30-days-thereafter] in the district court in the
26 county where the person resides or in the district court of Travis
27 County, Texas. An appeal of an action of the board is governed by

1 the Administrative Procedure and Texas Register Act, as amended
 2 (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review
 3 of an action of the board shall be conducted under the substantial
 4 evidence rule. [In-all-appeals-prosecuted-in-any-of-the-courts--of
 5 this--state--pursuant--to--the--provisions-of-this-Act,--such-trials
 6 shall-be-de-novo-as-that-term-is-used--and--understood--in--appeals
 7 from--justice--of--the-peace-courts-to-county-courts. --When-such-an
 8 appeal-is-filed-and-the-court-thereby--acquires--jurisdiction,--all
 9 administrative--or--executive--action--taken-prior-thereto-shall-be
 10 null-and-void-and-of-no-force-and-effect,--and--the--rights--of--the
 11 parties--thereto--shall--be-determined-by-the-court-upon-a-trial-of
 12 the-matters-in-controversy-under-rules-governing-the-trial-of-other
 13 civil-suits-in-the-same-manner-and-to-the-same-extent-as-though-the
 14 matter-had-been-committed-to-the-courts-in-the-first--instance--and
 15 there-had-been-no-intervening-administrative-or-executive-action-or
 16 decision. ---Under--no--circumstances-shall-the-substantial-evidence
 17 rule-as-interpreted-and-applied-by-the-courts--of--Texas--in--other
 18 cases--ever--be--used--or--applied--to-appeals-prosecuted-under-the
 19 provisions--of--this--Act. ---The--Legislature--hereby--specifically
 20 declares-that-the-provisions-of-this-section-shall-not-be-severable
 21 from--the--balance--of--this-Act,--and-further-specifically-declares
 22 that-this-Act-would-not-have-been-passed-without-the--inclusion--of
 23 this--section. ---If--this--section,--or-any-part-thereof,--is-for-any
 24 reason-ever-held-by-any-court-to-be--invalid,--unconstitutional--or
 25 inoperative--in--any--way,--such-holding-shall-apply-to-this-entire
 26 Act,--and-in-such-event-this-entire-Act-shall-be-null,--void--and--of
 27 no-force-and-effect.]"

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1 "Section 26. PENALTIES. (a) Any person who violates any
2 provision of this Act or any person who falsely states or
3 represents that he has been or is a polygraph examiner or trainee
4 or that he is qualified to apply instrumentation to the detection
5 of deception or verification of truth of statements shall be guilty
6 of a misdemeanor and upon conviction thereof shall be punished by a
7 fine of not less than \$100 nor more than \$1,000 or by imprisonment
8 in the county jail for a term of not to exceed six months, or both.

9 "(b) A person commits an offense if the person
10 intentionally, knowingly, recklessly, or with criminal negligence
11 violates Section 19A of this Act relating to the confidentiality of
12 information acquired from a polygraph examination. An offense
13 under this subsection is a Class B misdemeanor."

14 SECTION 4. The Polygraph Examiners Act, as amended (Article
15 4413(29cc), Vernon's Texas Civil Statutes), is amended by adding
16 Sections 13A, 19A, 19B, and 24A to read as follows:

17 "Section 13A. NOTICE AND ANALYSIS OF EXAMINATION RESULTS.
18 (a) Within 30 days after the date a license examination is
19 administered under this Act, the board shall notify each examinee
20 of the results of the examination. However, if an examination is
21 graded or reviewed by a national testing service, the board shall
22 notify each examinee of the results of the examination within two
23 weeks after the date the board receives the results from the
24 testing service. If it is foreseeable that the notice of the
25 examination results will be delayed for more than 90 days after the
26 examination date, the board shall notify each examinee of the
27 reason for the delay before the 90th day.

1 "(b) If requested in writing by a person who fails a license
2 examination administered under this Act, the board shall furnish
3 the person with an analysis of the person's performance on the
4 examination."

5 "Section 19A. CONFIDENTIALITY OF EXAMINATION RESULTS. (a)
6 Except as provided by Subsection (c) of this section, a licensed
7 polygraph examiner, licensed trainee, or employee of a licensed
8 polygraph examiner may not disclose to another person information
9 acquired from a polygraph examination.

10 "(b) Except as provided by Subsection (d) of this section, a
11 person for whom a polygraph examination is conducted or an employee
12 of the person may not disclose to another person information
13 acquired from the examination.

14 "(c) A licensed polygraph examiner, licensed trainee, or
15 employee of a licensed polygraph examiner may disclose information
16 acquired from a polygraph examination to:

17 "(1) the examinee or any other person specifically
18 designated in writing by the examinee;

19 "(2) the person, firm, corporation, partnership, business
20 entity, or governmental agency that requested the examination;

21 "(3) members or their agents of governmental agencies such
22 as federal, state, county, or municipal agencies that license,
23 supervise, or control the activities of polygraph examiners;

24 "(4) other polygraph examiners in private consultation, all
25 of whom will adhere to this section; or

26 "(5) others as may be required by due process of law.

27 "(d) A person for whom a polygraph examination is conducted

1 or an employee of the person may disclose information acquired from
2 the examination to a person described by Subdivisions (1) through
3 (5) of Subsection (c) of this section.

4 "(e) The board or any other governmental agency that
5 acquires information from a polygraph examination under Subdivision
6 (3) of Subsection (c) of this section shall keep the information
7 confidential.

8 "Section 19B. INFORMATION ABOUT COMPLAINTS. (a) The board
9 shall keep an information file about each complaint filed with the
10 board relating to a licensee.

11 "(b) If a written complaint is filed with the board relating
12 to a licensee, the board, at least as frequently as quarterly,
13 shall notify the complainant of the status of the complaint until
14 its final disposition unless the notification would jeopardize an
15 undercover investigation."

16 "Section 24A. CONSUMER INFORMATION. (a) The board shall
17 prepare information of consumer interest describing the regulatory
18 functions of the board and the board's procedures by which consumer
19 complaints are filed with and resolved by the board. The board
20 shall make the information available to the general public and
21 appropriate state agencies.

22 "(b) Each written contract for the services in this state of
23 a licensed polygraph examiner and each waiver of liability that is
24 signed by the subject of a polygraph examination shall contain the
25 name, mailing address, and telephone number of the board."

26 SECTION 5. A rule adopted by the Polygraph Examiners Board
27 before September 1, 1981, that conflicts with the Polygraph

S.B. No. 441

1 Examiners Act, as amended (Article 4413(29cc), Vernon's Texas Civil
2 Statutes), as amended by this Act, is void. Within 90 days after
3 September 1, 1981, the board shall repeal the rule.

4 SECTION 6. (a) A person holding office as a member of the
5 Polygraph Examiners Board on the effective date of this Act
6 continues to hold the office for the term for which the member was
7 originally appointed.

8 (b) The governor shall appoint two public members to fill
9 the offices of the incumbent members who are not polygraph
10 examiners in the commercial field and whose terms expire June 18,
11 1983, and June 18, 1985.

12 SECTION 7. This Act takes effect September 1, 1981.

13 SECTION 8. The importance of this legislation and the
14 crowded condition of the calendars in both houses create an
15 emergency and an imperative public necessity that the
16 constitutional rule requiring bills to be read on three several
17 days in each house be suspended, and this rule is hereby suspended.

S.B. No. 441

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 441 passed the Senate on March 16, 1981, by a viva-voce vote; and that the Senate concurred in House amendment on May 27, 1981, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 441 passed the House, with amendment, on May 25, 1981, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor

AN ACT

By Doggett

relating to continuation of the Polygraph Examiners Board and regulation of the operators of devices that are intended to determine if a person is telling the truth and to disclosure of the information acquired from the devices; providing penalties.

2-5-81
FEB 9 1981 Filed with the Secretary of the Senate
Read, referred to Committee on STATE AFFAIRS
MAR 12 1981 Reported favorably.
Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
MAR 16 1981 Ordered not printed.
Senate and Constitutional Rules to permit consideration suspended by unanimous consent
_____ yeas, _____ nays.
To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.
MAR 16 1981 Read second time and ordered engrossed
passed to third reading.
Caption ordered amended to conform to body of bill.
MAR 16 1981 Senate and Constitutional 3-Day Rules suspended by vote of 29 yeas, 0 nays to place bill on third reading and final passage.
MAR 16 1981 Read third time and passed by a viva-voce vote
_____ yeas, _____ nays.

OTHER ACTION:

Betty King
Secretary of the Senate

Fatsy Spaw
ENGROSSING CLERK

MAR 17 1981 Received from the Senate
MAR 19 1981 Read first time and referred to Committee on Government Organization
5-14-81 substituted
Reported favorably amended, sent to Printer at 8:25 am
MAY 19 1981 Printed and Distributed 5:56 p.m.
MAY 19 1981 Sent to Committee on Calendars 6:18 p.m.
MAY 23 1981 Read Second time Subs. amended: passed to third reading (failed)
by (Non-Record Vote) Record Vote of _____ yeas, _____ nays
Present, not voting.
Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas _____ nays _____ present not voting.
MAY 25 1981 Read third time (amended); finally passed (failed) by a (Non-Record Vote) Record Vote of _____ yeas _____ nays
present, not voting.
MAY 25 1981 Caption ordered amended to conform to body of bill.
MAY 25 1981 Returned to Senate.

Betty Murray
Chief Clerk of the House

MAY 25 1981 RETURNED FROM HOUSE with

MAY 27 1981

Senate concurred in House amendments by viva voce vote.

March 16, 1981 Engrossed
March 17, 1981 Sent to HOUSE